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JAPAN'S SPECIAL POSITION IN MANCHURIA

JAPAN'S SPECIAL POSITION IN MANCHURIA

ITS ASSERTION, LEGAL INTERPRETATION AND PRESENT MEANING

BY

C. WALTER YOUNG, M.A., PH.D.

JAPAN'S JURISDICTION AND INTERNATIONAL LEGAL POSITION IN MANCHURIA

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To
Norman Dwight Harris, Ph. D.
and
Kenneth Wallace Colegrove, Ph. D.
My Professors in the Department of Political Science
of Northwestern University, 1918-1922,
This Volume Is Respectfully Inscribed.

"It is impossible to apply to China the simple formulæ which content us when we are dealing with Western nations . . . . China suffers under sources of weakness which we citizens of Western countries find it always easy to understand, while she certainly enjoys sources of strength which all of us would be happy to share."

—The Right Honorable Arthur James Balfour,
in an Address at the Washington Conference.

"One of my favorite paradoxes is that everything is dead in twenty-five (or fifty) years."

—Mr. Justice Oliver Wendell Holmes.

GENERAL PREFACE

The three volumes, of which this is one, include the following titles: *Japan's Special Position in Manchuria, The International Legal Status of the Kwantung Leased Territory,* and *Japanese Jurisdiction in the South Manchuria Railway Areas.* These together comprise a series, under the general title: *Japan's Jurisdiction and International Legal Position in Manchuria.* Although they have been written simultaneously, and may be regarded as a unity for the purpose of analyzing the international legal position of Japan with respect to Manchuria, each volume is in itself a unified whole, a separate book.

These studies are not history. They are rather studies in politics and international law. The materials of the historian have been drawn upon only to furnish the essential stuff for a background, and to present the sequence of events which is essential to a delineation, description and evaluation of the particular categories of politics or law dealt with. Facts, then, which may be of interest or essential to the historian, may have had to be intentionally excluded from this study. The methods of dealing with the facts naturally have been those rather of the student of politics than of history. However this may be, the sequence of historical events has been followed, where possible, so that the very de-

velopment of the problems of legal status and right, whether with respect to the Kwantung lease, the South Manchuria Railway, or the general position of Japan in Manchuria, may be traced through from their origins to the present.

Nor are these studies in the field of economics. But, as economic, like historical, facts are intimately bound up with those of politics and the law—as, for example, in the question of the prior right of foreign financiers to furnish the capital under a specific loan contract for the construction of a Manchurian railway—it will be seen that these volumes, especially the one dealing with Japan's claims to a "special position" in Manchuria, are alive with material of interest to the student of international economic relations. Viewed from the point of view of legal rights and status, much will be found here which make up the ground plan, the rights, the restrictions, the avenues through and around which trade and capital enterprises have developed in Manchuria.

Finally, these are not, primarily, studies in diplomacy, foreign policy, or colonial administration. Particularly is this true of the volume dealing with the international legal status of the Kwantung leased territory. This is a subject which lends itself to legal analysis, in spite of its reputed confusion in international law. Japanese administrative rights here and in the South Manchuria Railway areas are studied only in so far as such description may have utility in clarifying the fundamental questions of

legal right, under treaties and international law, which are here considered to the exclusion of questions of administrative organization or the wisdom or unwisdom of administrative policies.

But international legal situations would be deprived of both interest and clearness were they entirely divorced from the realities of diplomacy. The question of intent may be the major subject of a particular inquiry—as that of China's intent in leasing Kwantung to Russia, and permitting its transfer to Japan—and, to answer such a problem satisfactorily, history and diplomacy must be drawn upon for any adequate interpretation. To treat the question of the validity of the Sino-Japanese treaty and notes of 1915, which extended the Kwantung lease period to ninety-nine years, without some considerable attention to the exceptional diplomacy which attended the signing of those agreements, would produce conclusions of little worth—a formalistic dialectic in which no jurist would indulge.

Diplomacy, the complex negotiations affecting Japan's position in Manchuria, even the asides and the overtones of policy, revealed at times by incidents, actions, opinions, perhaps even attitudes which are the psychological stuff that give new meaning, real meaning, to terminology with which we must here deal, these cannot be divorced from a legal analysis.

Japan's " special position " in Manchuria is a far different thing in the mind of a Japanese, who may

not have concerned himself with the question of Japan's legal rights in Manchuria, than it is to those who view that terminology shorn of its aura of historical and patriotic associations. But the possible value and the limitations of our approach here are suggested by this situation. If a defense of that approach or method were necessary, it would be found in the terse language of that eminent English publicist in international law, the late Professor T. J. Lawrence, when he wrote on leased territories in China: " As a rule words describe things. In diplomacy they are sometimes used to describe—well, other things! " These " other things " are very frequently omitted from treaties and official correspondence—but they may be what the master in chancery would be quite willing to regard as admissible testimony.

Inevitably, especially in dealing with Japan's claims to a " special position ", to " special rights and interests ", and to " vital interests " in Manchuria, it has been impossible to avoid some judgment—or perhaps some presentation of a situation which will influence the reader's judgment—as to the rightness or wrongness of a particular state policy. The author has been cautious not to abuse that discretion which he has had to exercise in presenting such materials. Nevertheless, the manner in which he has exercised that discretion is a proper subject for criticism by the impartial reader. A caveat, which may, perhaps, be superfluous if the contents of one

of these volumes be tempered with that of another, needs to be emphasized here: whatever impressions may be gained as to the author's views on the questions of state policy involved may be entirely inadequate reflections of the author's real views on these very questions. In fact, there are numerous such questions pertaining to Japan's position in Manchuria, and dealt with at length in these volumes from a legal point of view, which, if the author's purpose were to appraise foreign policy as such, or pass judgment on the ethical considerations, the questions of intrinsic justice, or even of expediency, would have had to have been developed in a manner far different, and to other conclusions, than are even suggested in these volumes.

The author can lay no claim to having arrived at the maturity of judgment which would enable him to claim complete consistency in the application of his method to so dynamic an international situation as exists in Manchuria. This field is so primed with a special interest for him that the dangers of distortion of what should be a dispassionate and impartial weighing of the facts against the rules of law applicable are many. He has been working in an uncharted frontier, where rules of international law are as frequently honored in the breach as in the observance. "Manchuria and International Law!"—what bedfellows! To introduce one to the other may not always produce congenial consequences.

International law is itself full of wide gaps. There is frequently an absence of universality of accep-

tance of even basic principles. At times, the principle which has widest acceptance by states and publicists alike may fall short of producing justice in a given circumstance. Ethical standards may suffer from the rigid application of a generally accepted legal rule. Are we then to cast aside the rule of law? Is it not essential rather to state the rule of law, then apply it, and remain an honest interpreter of the law, than to attempt to create a new rule of law, founded on nothing but expediency? There is, too, a broader question of expediency involved, for international law itself may be at stake. International law, like all law, is constantly developing. It grows to the ideal, but never can reach it. If the reign of law is to survive, and order remain in international relations, the task of the interpreter of international law is to inquire as to what it is at a particular time, and not to presume for himself the right to so interpret it as to suit his private views as to expediency in applying it to a situation which he, were he a diplomat, might wish to deal with quite otherwise. Here, in Manchurian situations, we shall find numerous illustrations of cases where international legal rules and principles have been badly strained to suit the national purposes of particular states.

This is not to say that legal situations in Manchuria here treated would not possibly have to be interpreted very differently after a decade or two. The law itself will change. Old issues of practical

diplomacy may have to be reopened. For the present, however, it is well to draw the line as sharply as possible between the law as it now exists and the ideal which will bring complete justice in given situations. Diplomacy itself will have to deal with such situations, and may well have to find solutions on the basis of wise policy. Legal rights need clearly to be understood and respected; they may be given up, and, perhaps, must be given up, in the interest of the very state which may have a perfectly valid legal claim to them. It is, nevertheless, essential, particularly in these Manchurian situations, to know the precise limits of legal rights claimed and justifiable before diplomatic negotiation can proceed with practical solutions. There is need, too, to know when rights claimed are not justifiable; to know when actions criticized as taken illegally, are actually justifiable under the treaties and under international law. There has been far too much assertion and counter-assertion as to Japan's treaty rights in Manchuria, without much attention to the verities which, in most cases, can be accurately described.

* * * *

In the several years which the author has required to assemble the materials presented in these volumes he has had the benefit of close association with scores of Japanese and Chinese officials, administrators, technicians and scholars in Manchuria, and with some who, occupying responsible posts elsewhere,

have had intimate knowledge of Manchuria. The generosity with which these individuals have coöperated in furnishing otherwise unavailable data, including much that has not previously been published even in their own languages, has made this work possible. No amount of mere residence in Manchuria could have supplied that need, though it may be that some considerable residence there has enabled the writer to develop those friendships and intimacies without which his investigations must necessarily have been regarded—to put it quite frankly—as pestiferous.

Unfortunately, it is quite impossible here even to mention the many Japanese and Chinese who have furnished the writer with valuable materials for these studies. They will know, perhaps by chance reference to portions of these volumes, how much the author may be indebted to them for materials, and may take that dependence as an expression of the author's gratitude to them.

In the nature of the case—since these studies, and especially one volume, have to do with the South Manchuria Railway—the many officials and staff members of the South Manchuria Railway Company, especially in Dairen, have been of the greatest assistance. The author has time and again imposed upon their more important duties and has received in return unfailing courtesy and consideration. I know of no other private or public institution, at all similarly situated, which could have been approached with greater assurance that my requests would be received with efficiency and generosity. Why the

author, through four distinct administrations which have had the railway in charge, has been so liberally treated will, no doubt, be answered differently by various readers of these volumes. To the author himself, however, this generosity remains somewhat of a puzzle. To Kwantung Government officials, also, the author wishes here to express his gratitude for their coöperation in supplying him with essential materials not otherwise available.

Materials of the Foreign Intercourse Office, maintained by the Chinese Government at Mukden, have been placed at the writer's disposal by Chinese friends. Some have been supplied by Chinese scholars associated with Northeastern University at Mukden; others, by officials. In the nature of the case, many of these materials have had bearing upon those most contested questions, of principal concern in contemporary politics, which have to do with the jurisdiction and activities of the Japanese railway guards along the South Manchuria Railway areas, or have bearing on the administration of the so-called " railway towns ".

Under these circumstances, it must be apparent that it is with no intention to overlook these many favors that the author takes this occasion to express, by specific reference, his indebtedness to his revered professor, Dr. W. W. Willoughby, of the Johns Hopkins University, whose personal counsel has been hardly less valuable than the materials which the author has been permitted to draw from the sev-

eral scholarly books of this distinguished student of constitutional and public law, as well as of the Far East. To thank him for his generous preface is not to admit that his concluding paragraphs are at all defensible!

To Dr. John V. A. MacMurray, formerly American Minister to China, for many years in the service of the Far Eastern Division of the Department of State, and now head of the Walter Hines Page School of International Relations at the Johns Hopkins University, the author's thanks are due for suggestions and valuable criticism. No student of Far Eastern politics and diplomacy can overlook his well-known compilation of China treaties and agreements. He must rather depend constantly upon it.

To those who have labored through the galley proofs, the author wishes here to express his indebtedness for suggestions and criticism. Mr. C. Gordon Post, instructor in political science at the Johns Hopkins University, has taken the responsibility for preparing the indices of these volumes and has executed his task with care and the exercise of a certain judgment for which his training has qualified him. For the tedious task of reading the " first galleys ", as well as for her tolerance in listening to the author's defense—not always impregnable—of his original manuscript, and for suggestions as to revision, especially in the interest of clarity of expression, the author wishes here to express his gratitude to Gladys Hildreth Young.

The author's association with the Institute of Current World Affairs, New York City, made possible his return to Manchuria in the autumn of 1930—his former periods of field study in Manchuria having been in 1923, 1926, 1927 and 1929. These volumes, therefore, contain materials dealing with some of the important recent developments bearing on Japan's position in Manchuria.

Whatever may have been the degree of dependence of the author upon certain materials, generously made available in English translations from Japanese and Chinese originals, he is in a position to accept full responsibility for such use as has been made of them in these studies. For the material content of the volumes, the interpretations presented, and the conclusions drawn, he must assume like responsibility.

C. Walter Young
The Dundee Arms
Baltimore
July, 1931

FOREWORD

BY

W. W. WILLOUGHBY

The Washington Conference of 1921-1922 marked the beginning of a new era in the history of China's dealings with the other Powers. For the first time China was then enabled to sign treaties and other agreements which secured benefits to herself. Prior to then she had been compelled to grant rights to the other Powers. Since then she has continued her efforts to free herself from the conventional limitations upon the free exercise of her sovereign powers, with the result that the time does not appear far distant when she will be, in almost all respects, mistress within her own political household.

However, it is clear that it is within the Manchurian provinces that she will find her greatest difficulty in bringing about a status that will be completely satisfactory to herself, for it is there that Japan has developed such extensive economic interests that she is unwilling to look forward to the time when the maintenance of these interests will be wholly subject to the political control of China. Therefore, although, in a number of respects, Japan has yielded to China's insistent demands for a greater freedom from the unilateral limitations that

have been imposed upon her sovereign action, she, Japan, has jealously guarded those treaty rights, which, in her opinion, make more secure, or, perhaps, more ample, these economic interests which she has in the Manchurian area, and which, she has several times declared, are vital to her own national life.

At the same time, it is to be observed that some of the more important political or jurisdictional rights in Manchuria to which Japan now lays claim are based upon the treaties and agreements which resulted from the "Twenty-one Demands" which Japan made upon China in 1915, and which, because of the nature of those demands, and of the circumstances under which they were made, the Chinese, though compelled to sign them by a formal ultimatum from Japan, have consistently declared to be without a moral basis, and, therefore, subject to be disregarded by them when the opportunity to do so presents itself.

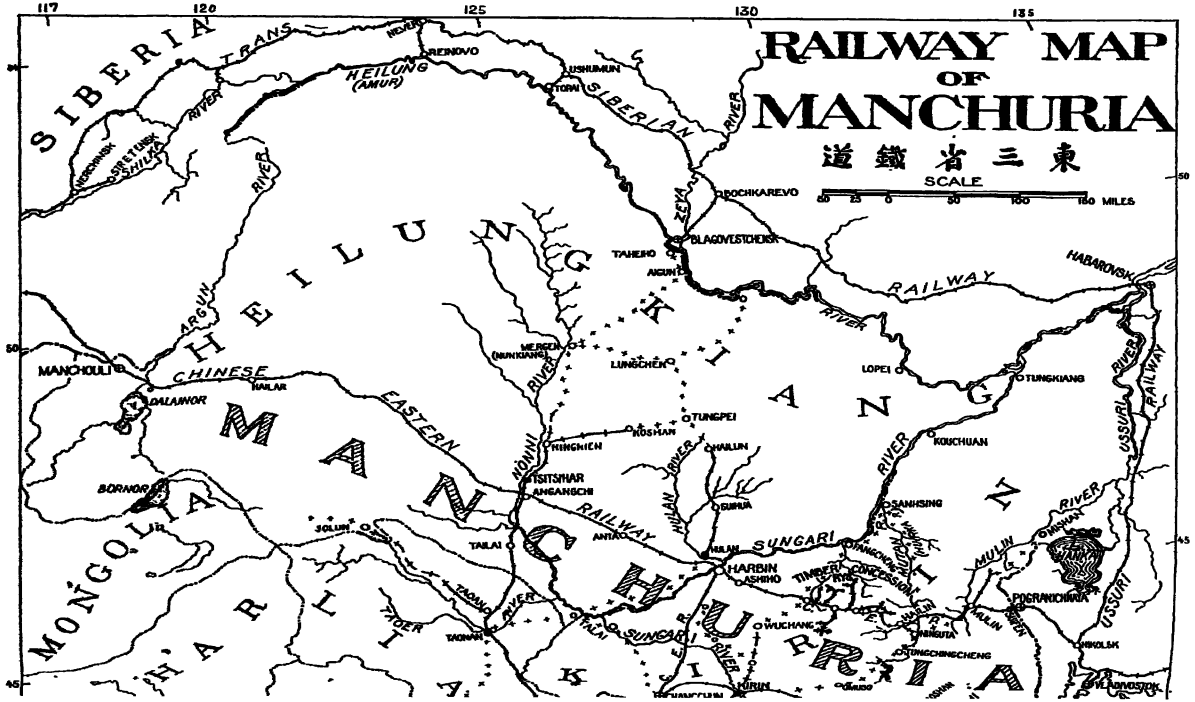
A further complicating factor in the Manchurian situation is that provided by the Russian interests. At the present time, leaving aside the situation in Outer Mongolia, these relate principally to the Chinese Eastern Railway. In addition to this railway problem, which is an exceedingly complicated one, there is no assured confidence upon the part of either China or Japan that, when Soviet Russia has brought her domestic household into what would appear to be a permanently satisfactory order, she will not again attempt to extend her political control over the

northern parts of Manchuria, or even, under favoring circumstances, over southern Manchuria, and thus not only trespass upon China's territorial sovereignty but again present that threat to Japan which, in 1905, led to the Russo-Japanese War.

It is clear, then, that here in Manchuria exists a situation which can easily lead to serious international conflict. This being so, it is of the utmost importance that the facts of the situation should be made clear to the world. In the present volume, which is one of a series of three, Dr. Young has sought to do this so far as the jurisdictional rights to which Japan lays claim in Manchuria are concerned. It is a fortunate fact that one so eminently qualified should have set himself to this task. By his previously published writings, Dr. Young has gained for himself a high reputation as a scholar in this field. More than this, he has shown an ability to deal in an impartial way with problems which, to one less objectively minded, offer abundant opportunity for emotional and, therefore, less balanced treatment. Also, it is to be added, that Dr. Young has not contented himself with the information obtainable from official documents and other printed sources, but has made repeated visits to China and Japan, and has travelled extensively in Manchuria in order that he might see conditions at first hand, and, by personal interviews with leading officials, obtain a truer insight into the significance of these conditions than could be derived from an examination of printed documents or from formal official declarations.

It is the considered opinion of the writer that these three volumes constitute one of the most important contributions which have been made during recent years to the scientific study of political conditions in the Far East. It is to be hoped that Dr. Young will, in the near future, carry his studies of the Manchurian problem into other than the purely jurisdictional field, and provide scholars with an evaluation of the essential economic, social and political interests which are involved, as well as with a detailed account of the manner in which the jurisdictional rights in Manchuria have, in practice, been exercised and of the results that have flowed therefrom. One may even hope that Dr. Young will eventually feel justified in departing from the purely scientific and objective field, and enter that of the statesman in order to express his own matured and factually fortified judgment as to what should be the Manchurian policies of all the nations concerned.

W. W. W.
THE JOHNS HOPKINS UNIVERSITY
July, 1931


RAILWAY MAP
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東三省鐵道
SCALE
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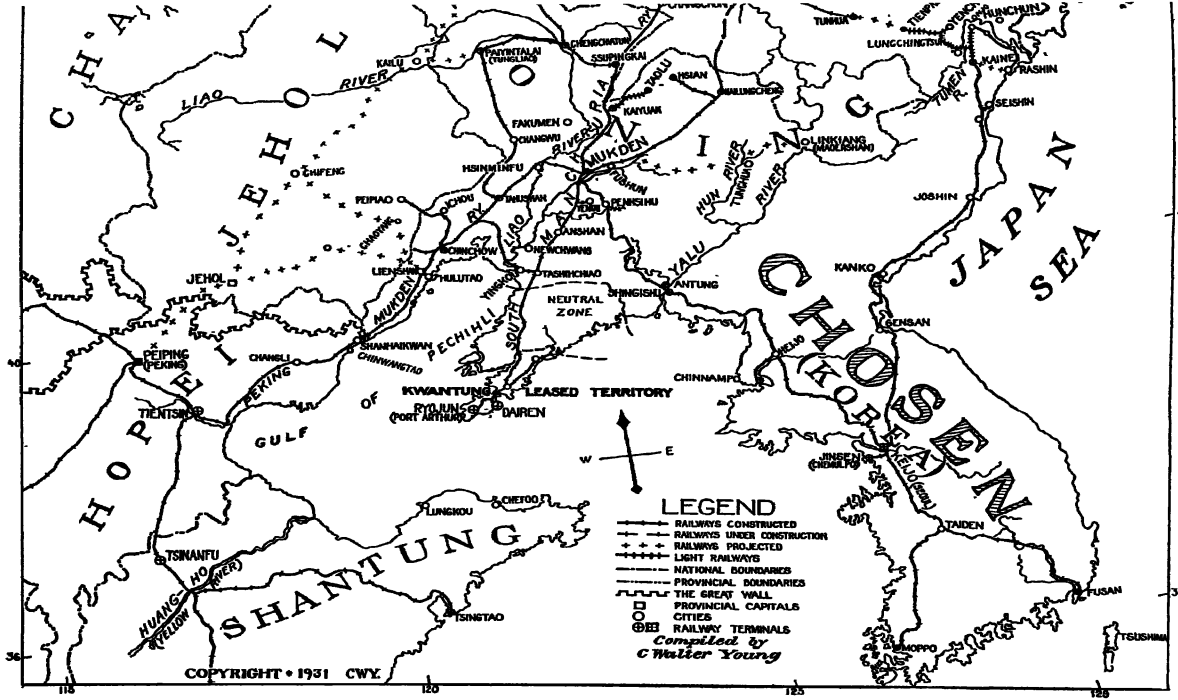
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CHIFENG
JEHOL
KAILU
FANYUHTAI (TUNGLIAO)
SSUPINGKAI
HSIAN
MAILINGCHOW
TUNHUA
LUNGCHINGTSUN
RASHIN
TUNGHUA
LINKIANG (MACHIANG)
PENHSIHU
ANSHAN
TASHICHIAO
SHINGISHU
CHANGLI
PEIPING (PEKING)

INTRODUCTION

Manchuria, formerly identical with the Three Eastern Provinces and now inclusive of Jehol province to make the " Four Northeastern Provinces " of China, has long been recognized as the area in Eastern Asia within which international conflict is most likely to arise. In no part of China is there an area where foreign economic and political interests are so definitely concentrated in a specific geographical region, and where those interests are so intimately bound up with the national economy or foreign policy of foreign states as in Manchuria.

The vested interests, particularly in railways, of Japan and Soviet Russia in Manchuria are the *cadres* around which the more intangible interests of these states have been built. If one were to grant that a " liquidation " of these interests in Manchuria were to be expected within the next few years—a consummation which is by no means certain—so deeply are those interests scarred into the soil of state policy that there would yet remain vital elements to continue to complicate international politics in this region.

But resort to armed force to " settle " international disagreements is extremely rare when compared with the month-by-month impact of ordinary, and frequently unnoticed, diplomacy. The absence of war does not mean the absence of conflict. In

Manchuria, particularly as between Japan and China, there exists today a serious tension, provoked by the fact of Japanese possession of the South Manchuria Railway, and precipitated, among other causes, by the recent Chinese determination to construct railways of their own and route the freight traffic of this rich region to their own seaport now being developed at Hulutao. In view of the political rôle of the Japanese-controlled South Manchuria Railway (with terminals at Dairen, Changchun, Yingkow and Antung), manifested, for example, through the administrative authority which for twenty-five years the Japanese have exercised over the "railway towns" in the so-called "railway zone", the Chinese have so far successfully prevented the completion of a Japanese-finance railway from Kirin to the Korean frontier.

It is generally supposed, outside of the Far East, that Japanese enterprise has monopolized "South Manchuria". This is, of course, not correct, although the South Manchuria Railway Company has always been, since its founding in 1906, the most aggressive agent operating in this area. Japanese banks, especially the Bank of Chosen, have manifested a much keener interest in Manchurian financial undertakings than have the banks, for example, of Great Britain or the United States. There is a danger, however, that the unsuccessful attempts of British and American bankers and railway construction companies, especially during 1907 to 1911, to

implement their contracts with the Chinese Government by actual activity, as in railway construction, in Manchuria, will have been forgotten. Those negotiations are of importance today, first, because they shed much light on the former claim of Japan to a monopoly of railway construction, as far as foreign capital was concerned, in southern Manchuria, and, second, because they enable one to pass judgment on the international legal justification for that claim.

Japan's legal position in Manchuria rests on a foundation which was the Russian position as of 1904—just before the Russo-Japanese war. The original Russian treaty rights, the acquired Japanese rights after the treaty of Portsmouth, the negotiation of new Sino-Japanese agreements and specific railway contracts which served to expand the body of Japanese treaty rights, these, and the several occasions when Japanese claims under those agreements came into conflict with contract rights of American and British financiers, have been studied and evaluated in this volume.

It is quite obvious, however, that the Japanese have not based their claims to a " special position ", to " special rights and interests ", to " paramount interests ", " vital interests " or, for that matter, to a " sphere of railway interest " in Manchuria entirely either on formal agreements with China or the quantitative sum of the prior options which their financiers may have acquired to construct railways

there. In the following pages an attempt has been made—original, in that there exists no work in any language which deals with this entire subject—to describe the development of Japan's position in Manchuria, and to do so with a major purpose of ascertaining just what meaning and international legal significance those claims, variously described, and in language at times meaningless in international law, may have had.

Japan's " special position " in Manchuria has not been static—even in the official view. A decided change in the Japanese conception of the term came about with the negotiations preliminary to the formation of the International Banking Consortium during 1918-1920. The Washington Conference, by securing the unanimous pledge of the powers not to seek for themselves or their nationals any " general superiority of rights " in any part of China necessitated a change in both the description and the point of emphasis of Japan's " special position " in Manchuria. Japan's dilemma has been to maintain in fact a paramountcy of economic interest and at the same time to give the appearance of welcoming the introduction of non-Japanese capital and enterprise in Manchuria.

The dependence of Japanese national economy upon Manchuria for raw materials, food, and market outlet has given rise to a pronouncement, called a " doctrine ", of contemporary Japanese statesmen and writers, which rests Japan's claim of right to

exploit Manchurian resources on the abstract ethical, presumed to be legal, right of a state, comparatively poor in natural resources, to live and to develop on the resources of another state. There is no question as to the ethical justification of the claim to such a "privilege"; question arises solely as to whether such a "privilege", economic in character, can be transformed into a "right" in international relations.

The realities either in international relations or law are as often to be found outside the actual texts of treaties, agreements and diplomatic correspondence, as in them. Particularly in this volume of the present series has it been necessary for the author to draw upon the "outside" materials which give some reality to the "inside". Only by so doing has it been possible to pass some judgment as to the meaning—in the Japanese intent and in law—of such terms as "special interests" and "special position".

But, as it has been alien to the author's purpose to present an interpretation of Japanese policies as such with respect to Manchuria, this method naturally has limitations which will disappoint both the historian and the popular reader. The author's purpose, however, will have been served if, while attempting throughout to offer a legal interpretation of Japan's "special position" in Manchuria, he may also have furnished a background of evidence necessary to an adequate description of Japanese

policy as such. Except for the use which the author has made of such new materials as Viscount Ishii's memoirs, other materials published only in China or Japan, and such unpublished data as he himself has been able to obtain from responsible sources in Manchuria and elsewhere, this volume contains little that is unfamiliar to serious students of the Far East. There is here, however, a systematic treatise, an analysis of episodes and problems from the point of view of the student of politics, not that of the historian, and, in result, a first attempt to present a critical interpretation of Japan's "special position" in Manchuria.

C. W. Y.

NOTE.—In such an expression as the following "the British Government have taken the position, etc." it will be noticed that the author has adopted, in the following pages, the grammatical usage of the British Foreign Office which requires that a plural, and not a singular, verb be used after a subject which designates a particular government. The practice of the governments of the United States, Japan and China, in English-language correspondence, is not uniform, a plural verb frequently being used by each of them. An effort has been made here to be consistent.

Grammatically, either form of the verb is entirely correct. The plural form has here been used because of the greater consistency of the British Foreign Office in this matter of style in diplomatic correspondence, because, where quotations especially from British sources are incorporated into the author's text, it is desirable to preserve the number of the verb, because of the superiority of the pronoun "their" to "it," referring to a government, and because it is presumed that the requirements of respect for particular governments counsel use of the plural verb. Consistency in this regard would facilitate translation into the Chinese or Japanese languages.

CONTENTS

CHAPTER	PAGE
General Preface	vii
Foreword by W. W. Willoughby	xix
Map	xxiv-xxv
Introduction	xxvii
I. The International Legal Position of Manchuria	1
1. Manchuria—An Integral Part of China	1
2. Relation to the Central Chinese Government	8
3. Manchuria, Not a Protectorate	26
4. Manchuria—Sphere of Influence or Interest?	35
II. Russian and Japanese Spheres of Railway Interest	47
1. The Early Russian Sphere: 1896-1904	47
2. Russo-Japanese Agreements Delimiting their Spheres: 1905-1916	69
III. Japan's Claims to Monopolistic Railway Rights	87
1. The Original Legal Basis of Japan's Claims	87
IV. The Japanese Attitude toward Foreign-Financed Railways: 1907-1908	106
1. Defeat of the Hsinmintun-Fakumen Railway Project	107
V. The Japanese Attitude toward Foreign-Financed Railways: 1909-1910	125
1. The "Knox Neutralization Plan" and the Chinchow-Aigun Railway Project	125

CHAPTER PAGE

VI. JAPAN'S CLAIMS TO SPECIAL INTERESTS IN MANCHURIA: 1910-1915 169
1. Reservations to Early Consortium Operations 169
2. The Sino-Japanese Agreements of 1915.. 183

VII. JAPAN'S CLAIMS TO SPECIAL INTERESTS IN MANCHURIA: 1916-1918 193
1. The Lansing-Ishii Agreement of 1917.... 193

VIII. JAPANESE LOANS AND OPTIONS CONCERNING MANCHURIA: 1917-1918 239

IX. JAPAN'S CLAIMS TO A SPECIAL POSITION IN MANCHURIA: 1918-1922 261
1. The International Banking Consortium Negotiations: 1918-1920 261
2. The Washington Conference and Japan's Position in Manchuria..... 288

X. JAPAN'S "RIGHT TO LIVE DOCTRINE"..... 298
1. The Economic Basis for its Assertion.... 298
2. The Statement of the Doctrine..... 306
3. An Appraisal of the Doctrine..... 316

XI. "ASIA MONROE DOCTRINE"..... 327
1. Manchuria and the "Asia Monroe Doctrine" 327
2. Japanese Intervention in Manchuria..... 345
3. Japanese Treaty Rights in Manchuria.... 367

APPENDIX A. ISHII ON "SPECIAL INTERESTS"..... 372
BIBLIOGRAPHY 393
INDEX 403

JAPAN'S SPECIAL POSITION IN MANCHURIA

Its Assertion, Legal Interpretation and Present Meaning

CHAPTER I

The International Legal Position of Manchuria

1. Manchuria—An Integral Part of China. Manchuria is an integral part of China, a territory, however, which because of its geographical location and the attitude of certain foreign states, especially Japan, toward it, has come to be regarded as autonomous, if not actually independent. The fact is that there has been no period in modern history when the Three Eastern Provinces, called "Manchuria" by foreigners, were other than Chinese provinces. Whatever the forces of internal devolution in China, or the forces of external pressure which have combined to give certain foreign powers a privileged position in Manchuria, the fact remains that, for all international legal purposes, these provinces are but a part of China over which the central government has always had *de jure* authority.

This introductory statement may seem either superfluous, over-simplified, or otherwise inade-

quate, especially to serious students of Far Eastern politics and diplomacy. Superfluous it is not, however, when directed to the very considerable body of opinion which for the past score of years has come to regard Manchuria as having an international legal status of its own, or as being at best a politically hyphenated appendage of China.* Over-simplified and quite inadequate is the brief introductory statement, however, for it neither accounts for the special acquired position and privileges of Japan in portions of that territory, nor for the fact that this territory has at times had a *de facto* local government all but independent from the central Chinese Government. Quite naturally much confusion, and much careless application of international legal terminology to Manchuria, have resulted. The result is a situation which is not without practical importance,

*The name "Manchuria" should not be understood, however, as having no official Chinese sanction. On the contrary, "Manchuria" is the official English-language designation which has been used by the Chinese Government for a half century, as, for example, at the Washington Conference (1921-1922) to refer to the three provinces of China which, in the Chinese language, are grouped under the name "*Tung San Shêng*" (literally "Eastern Three Provinces" and pronounced like "Doong San Shung"). The name "Manchuria" is a latinized word purporting to indicate the "Land of the Manchus"—which today it most emphatically is not. It was, of course, the original home of the Manchus who, even after the conquest of China in 1644, sought to preserve it for their race. Today, over 90 per cent. of the population of about 27,000,000 are Chinese, and there are more foreigners (Russians and Japanese especially) in Manchuria than pure Manchus. This note is offered particularly to scout the criticism that the term "Manchuria" is used by certain foreigners to create the impression that this is not Chinese territory.

particularly as it has led to both intentional and unintentional distortion of the true position of Manchuria. All too frequent have been the veiled allusions and the direct references to Manchuria which have tended to obscure the fact that this particular portion of Chinese territory has never been properly called either a " protectorate ", a " virtual protectorate ", or a " sphere of influence " of any foreign state. Nor has Manchuria ever been an independent state and so recognized by the international circle.

This is not to say that these provinces have always conducted their internal administration under the direct control of the central government of China. The Mukden Government actually declared complete autonomy from Peking in 1922 and 1926. The *de jure* authority of the Chinese Government of Peking did not cease to be recognized, however, even by Mukden, far less by the international circle, and this in spite of the fact that Mukden actually negotiated treaties and agreements with foreign governments between 1922 and 1926. These treaties are still in effect, the first of several suggestions which will appear in this study, as the complicated facts of international intercourse concerning Manchuria take tangible form, suggestions which will demonstrate how difficult it is to apply certain usually accepted standards and formulæ of international law and relations to this territory. Manchuria presents a score of international legal anomalies for the solution of which many tenets of international law have but qualified application.

Nationalistically inspired scholars and apologists have published numerous studied distortions of the true position of Manchuria. When less informed foreign scholars are misled by such liberties with fact the need for a clear statement of the international legal position of Manchuria becomes evident. In passing, it is ventured that neither scholarship nor the political interests of either China or Japan is, in reality, at all permanently served by such misguided efforts to conceal facts with phrases gilded by a dwarfed view of patriotism.

Nor are the panegyrics of patriotic publicists solely to be held responsible for the resulting confusion. The very prevalence of popular notions, widely disseminated in the press of the orient, has led both historians and students of international politics to repeat popular expressions describing Manchuria, which, if their true technical applications be considered, are entirely erroneous.[1] From this it has followed that, by dint of mere repetition, words, popularly used to describe things, have been believed to be, in reality, applicable in their technical sense. It is, then, but another illustration of the psychology so well, though over-cynically, described by Voltaire: "*Credidi propter quod locutus sum,* 'I believed it because I have said it', is the motto of mankind. They repeat an absurdity, and by dint of repeating it, come to be persuaded of it."

[1] One of the most recent, and not unimportant, confusions of this sort was suggested by a statement of Professor M. Royama (Tokyo Imperial University) in a Manchurian round table of the Kyoto

The Japanese Government have always officially regarded Manchuria as an integral part of China, however much they have found it advisable to deal with the *de facto* Mukden authorities to secure immediate ends not otherwise obtainable. In Manchuria, however, it is a common occurrence to hear among Japanese the assertion that *in fact* these provinces have been independent for certain periods. This view is mothered by the recurrent *de facto* autonomy of the Mukden Government, and fathered by a hope that Manchuria may remain aloof from China's general disorder.[2] Realizing the possible effect of such

Conference of the Institute of Pacific Relations, November, 1929. Dr. Royama expressed a view which is characteristic of a large body of opinion in Japan when he declared that the change in the administrative system in Manchuria in 1907 gave rise to the view that Manchuria became "a part of China only in 1907". Professor Quincy Wright (University of Chicago) immediately made it clear that the form of the administrative system is not a criterion sufficient to show whether or not the central government has sovereignty over any territory. Dr. Hsia Ching-lin (Medhurst College, Shanghai) emphasized the importance of Dr. Wright's assertion by showing how a very widespread opinion, even among scholars, was noticeable abroad which accepted that Manchuria had an international legal status of its own. Professor Royama added that it would be inaccurate, of course, to consider Manchuria as outside the *de jure* authority of the central Chinese Government, but that to refer to the Three Eastern Provinces merely as "a part of China" was entirely "too simple".

[2] An editorial in the leading Japanese-owned English language paper in Manchuria includes the following statement: "The announcement that the Three Eastern Provinces have decided to establish an autonomic inter-provincial federation, reviving at the same time the inter-provincial assembly, would seem to be a decided step in the right direction." (*Manchuria Daily News*, January 15, 1926.)

boomerang statements abroad, other Japanese, especially those in responsible government posts, have reiterated that the Japanese Government have always admitted that Manchuria is an integral part of China.[3]

Chinese writers, on the other hand, have frequently referred to Manchuria as "a part of China", without admitting the fact that the oligarchy which has administered these provinces of the northeast, as from 1922 to 1928, rarely considered instructions from the central Chinese Government as more than a perfectly understandable "face-saving" device. Somewhat curious, too, is the fact that they have likewise called Manchuria a "virtual protectorate" of Japan, or referred to the Russian and Japanese "spheres of influence" there, where none has ever existed. Finally, it is well to note in passing that Manchuria is not a "dependency" of China, and was not, even before the reorganization of the provincial governments in 1907.[4]

[3] Such a view is that of Mr. Nakajima of the South Manchuria Railway: "God forbid on the honour of the Japanese people for us to deny Manchuria and Mongolia to be other than China's legitimate territory." (*Manchuria Daily News*, June 7, 1927.) Mr. Nakajima sought to dispel confusion among Japanese by this assertion: "In order to consider whether Manchuria is Chinese territory or not, no one need go back thousands of years. The historical fact that Manchuria has belonged to China since the Manchu dynasty came into power three hundred years ago quite suffices in itself to prove Manchuria to be Chinese territory."

[4] Manchuria is thus inaccurately referred to as a dependency of China, being grouped with Mongolia, Hsinkiang, and Tibet, in an otherwise commendable brochure by a French adviser to the now extinct Peking Government. (Escarra, Jean. *Droits et intérêts étrangers en chine*. 1928, p. 88.)

Both the territorial and administrative integrity of China, including the Manchurian provinces, have been so frequently recognized by all the principal powers having interests in China that there is no necessity here for more than mere mention of the official pledges of the powers, especially after the Boxer Rising in 1900, and conspicuously in the Nine-Power Pact of the Washington Conference as to principles and policies to be followed in matters relating to China.[5] No single power since 1905 has officially admitted a desire or policy to exclude Manchuria from the scope of application of these general pledges of respect for China's territorial and administrative integrity. But there is a certain sophistry in such pledges which have at times been reiterated in the very documents which have limited China's administrative integrity, as in the lease conventions, of which in Manchuria the Russian, and then the Japanese, lease of the Liaotung territory, are illustrations.[6] For this reason the Liaotung or Kwantung lease may well be dealt with separately, Manchuria, for the purposes of this study, being exclusive of Kwantung.[7]

[5] The Russian and Japanese pledges in the treaty of Portsmouth (1905) are indicative, as also the Japanese and American pledges in the Root-Takahira agreement of 1908. (*Ref.* Young: *The International Relations of Manchuria,* pp. 124, 185, 246.)

[6] Willoughby, W. W. *Foreign Rights and Interests in China,* Vol. I, p. 53. Rev. ed., 1927.

[7] A separate volume in this series deals with *The International Legal Status of the Kwantung Leased Territory;* another with *Japanese Jurisdiction in the South Manchuria Railway Areas.*

2. Relation to the Central Chinese Government. In the last ten years there has been but little difference between the exercise of power of the central Chinese Government over the Manchurian provinces and over such an interior province as Yunnan in south-western China. Since 1907, when the form of provincial government was changed with the appointment of a viceroy, having jurisdiction over all three Manchurian provinces, Shêngking (Fêngtien, now Liaoning), Kirin and Heilungkiang, Manchuria has been nominally governed from the central capital in practically the same way as the far western province of Szechuan. From 1876 to 1907 Manchuria was even more closely knit to Peking than several of the provinces of so-called " China proper ". Before 1876 the control of the capital was no less recognized, but a large degree of discretionary authority was given the military governor at Mukden, who, nevertheless, was always appointed by the Peking Government.

The successive stages in the evolution of local administration in the Three Eastern Provinces, and the changes effected, will serve to illustrate how China uninterruptedly from 1644—the date of the Manchu accession to the throne—to the present has maintained a *de jure* authority over them. Even since the troublous times following the Revolution, and during those confusing periods (1911-1912, 1922-1926 and 1928-1930) when the Mukden local régime was sufficiently strong to have declared complete autonomy, not only was the *de jure* authority

of the central government always recognized, but even the fiction of administrative subordination to the capital was invariably maintained.

Those who accept the very doubtful historicity of the Chinese official annals, purporting to record the internal political history of China before 1100 B. C., would have us believe that Manchuria was an integral part of China when the miraculous Emperor Yao (2357—2208 B. C.?) was on the throne.[8] The fortunes of Manchuria, frequently independent in part until 1644, need not concern us until the sovereignty of China was made unquestionably effective with the accession of the Ch'ing dynasty at Peking. The Manchus then very definitely incorporated their homeland into the Chinese state. The boundary limits between Russian Far Eastern territory and Manchuria were first made the subject of international agreement with a western state in the treaty of Nerchinsk of 1689, these being further defined in the treaty of Aigun of 1858.[9] Russia actually made an

[8] Manchuria "has, with the exception of a few occasions on which it temporarily fell into the hands of Eastern barbarians, always been an integral territory of China ever since 2255 B. C.", writes a Mukden official. (Ning, En-chêng. *Historical Account of the Liaoning Province*, p. 1.) Cf. Hsü, Shu-hsi. *China and Her Political Entity*, p. 1.

[9] French and English translations of the Russian and Chinese texts of the treaty of Nerchinsk (1689) may be found in: Hosie, A. *Manchuria*, pp. 136 ff. 2nd. ed. The French text and an English translation of the Chinese text of the treaty of Aigun (1858) may be found in the same work, pages 138-139. Other Sino-Russian treaties, such as the treaty of Peking (1860), have further defined the Manchurian boundaries. The best discussion of this subject in English is in: Hsü, Shu-hsi, *op. cit.*, pp. 73-86.

attempt to secure the cession of Manchuria in 1857 when Count Putiatin conveyed a letter from the Tsar for transmission to the Chinese Emperor. The request for cession of this territory to the Russians was very definitely refused.[10] In pursuance of the treaty of Peking (1860) Newchwang (Yinkow) was opened as the first port in Manchuria where foreigners might reside and trade.

The pressure of the Russians on the northern Manchurian frontiers, the increase of the Chinese population through illicit migration in defiance of the Manchu exclusion laws, the concurrent state-aided settlement of Chinese farmer garrisons, and the opening of Newchwang to foreign trade combined with the internal administrative abuses in Manchuria to cause Peking to reorganize the local administrative system. In 1875 the Military-Governor (*chiang-chün*) of the Three Eastern Provinces, resident at Mukden, memorialized the Throne urging the application to Manchuria of the provincial administrative system prevailing in parts of China more closely knit to the central government. The aim was to " concentrate authority with due effect " in the Military-Governor who would thus act with supreme power in military and civil affairs under the direct orders of the Throne.[11] In response to

[10] Krausse, A. *Russia in Asia*, p. 51.

[11] *Ching Pao* (*Peking Gazette*, or *Capital Report*, the official gazette of the Ch'ing dynasty, published periodically. This contains imperial edicts, rescripts, memorials to the Throne and ad-

these memorials the provincial governments of the Three Eastern Provinces were reformed in 1876, especially that of Shêngking, over which a Governor General (tsungtu) was appointed, thus bringing this territory more directly under unified control from Peking and partially standardizing its administration with that of other Chinese provinces.[12] This process was not completed until 1907 when a sweeping reorganization system was inaugurated.[13]

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ministrative regulations of the central government.) The citation is from the *Peking Gazette* for September 6, 1875. It contains a long memorial to the Throne presented by the Acting Military Governor (*tsung-shih*) of Shêngking (Fêngtien) province of the following import: A plan of reform for the administration of Shêngking, in which he declares that "the clashing of views between the military and the civil governors under the system hitherto in force" has led to numerous abuses and division of authority. After referring to the fact that "many changes in the official system of the province have been sanctioned since the foundation of the present dynasty", he proposes that, while retaining in name the present system of administration under the Six Boards, the Military-Governor be given powers similar to that of governors-general in other provinces of China. He therefore proposes that the Military-Governor of Shêngking by imperial decree be converted "into an office equivalent to that of Governor-General (*tsung-tu*), with powers to supervise not only the Board of War in the province, but also civil affairs". Each of the Six Boards at Peking had its representative at Mukden until 1875-1876, leading to many local abuses.

[12] In Shêngking (Fêngtien) province the Civil Governor (*fu-yin*) was retained, but made distinctly subordinate to the Governor-General (*tsung-tu*). Kirin and Heilungkiang provinces retained, even after 1876, their Military-Governors (*chiang-chün*). (Cf. Mayers, W. F. The Chinese Government, Part V, *The Three Manchurian Provinces*. 3rd ed.) For accuracy, it should be added that the Governor-General of Manchuria since 1876 retained his old title of Military-Governor (*chiang-chün*) as well.

[13] Cf. Hsieh, Pao-chao. *The Government of China* (1644-1911), pp. 321 ff.

Manchuria, unlike Mongolia and Chinese Turkestan (Hsinkiang), was never considered a dependency (*wai-fan*) of China. Even as early as 1876 each of the three Manchurian provinces had the status of provincial administrative units (*shêng*), although somewhat different in character from other local units in China proper. After 1876 Fêngtien, then called Shêngking, the principal Manchurian province, had an administrative system practically identical with the Liang Kuang (Kuangtung and Kuanghsi) provinces in the south.[14]

It was not until 1907, however, that Manchuria became a single administrative unit without a Governor-General, that is, a military man in supreme charge of the area. The change then effected, far from contributing to the autonomy of Manchuria, served to strengthen the authority of Peking. Following a tour of Manchuria in the winter of 1906, Hsü Shih-chang, who later became President of the Republic of China, and who was at that time president of the Ministry of Interior, memorialized the Throne urging a general reform of Manchurian provincial administration.[15] Hsü Shih-chang's re-

[14] Mayers, *op. cit.*, p. 34. Cf. Hsieh, *op. cit.*, p. 321.

[15] By imperial decree of April 20, 1907, this reform was sanctioned, and the office of Viceroy of Manchuria was created. Hsü Shih-chang was commanded to present a detailed scheme for reorganization to bring the Manchurian provinces in line with provincial administration elsewhere in "China proper". In May he submitted a second memorial embodying the principles of the new scheme. (Brunnert, H. S., and Hagelstrom, V. V., *Present-Day Political Organization of China*, pp. 384-395. English translation of the Russian original, 1912.)

commendations were accepted by the Throne. These proposed the abolition of the military régime, the replacement of the Military Deputy Lieutenant-Governors (*fu-tu-t'ung*) with the civil officials, such as circuit intendants, prefects and district magistrates, and urged the appointment of one Viceroy with jurisdiction over all three provinces, who would have general supervision over the Civil-Governors (hsün-fu). Manchuria was to become the testing ground for the new system of provincial administration proposed in 1906 by the Committee on Constitutional Reforms of the Peking Government.

In June of 1907 the proposed reform was actually carried out in large measure, Hsü Shih-chang receiving the post of first Viceroy of Manchuria. With the object of securing for Manchuria the ablest administrators available in China, the Throne strengthened the Hsü appointment by making T'ang Shao-yi, an able administrator and patriot, Civil-Governor of Fêngtien province, with offices in Mukden. Two new offices, a Bureau of Foreign Affairs (*chiao-shê-ssu*) in Kirin and Heilungkiang provinces, were created in the same year to make possible a more effective surveillance of pressing diplomatic developments with Russia on the north and Japan on the Korean frontier. More exceptional still was the new post of Frontier Commissioner, who, with his assistant, was charged with special jurisdiction over the Manchurian territory bordering Korea. A boundary dispute with Japan over the so-called "Chientao"

area, north of the Yalu river, had constrained the Chinese to give the incumbent of this new post direct appeal to the Emperor.[16] A much-needed reorganization of the frontier defense forces in Manchuria was effected, while the " original home of the dynasty " was thrown open to settlement by Chinese. Such immigration was subsequently to be encouraged on a large scale.[17]

These reforms were unprecedented in Chinese provincial administration. The task confronting Viceroy Hsü Shih-chang and his able assistant, T'ang Shao-yi, Civil-Governor of Fêngtien, was colossal. Yet the two years which followed actually transformed the Manchurian political picture. Man-

[16] Brunnert and Hagelström, *op. cit.*, p. 394. *Ching Pao* for July 10, 1907, contains the "Regulations for the Reorganization of the Provincial Governments of China", which were to be applied, in the above manner, first to Manchuria, with the object of subsequently extending them to other provinces. (Cf. also: *U. S. For. Rels.*, 1907, Pt. I, pp. 181 ff.) "The court hoped by this reorganization to increase the political energy, the efficiency and the power of resistance of the provinces." (Croly, Herbert. *Willard Straight*, p. 236.) "Had China been strong," declared Professor Toyokichi Iyenaga in 1912, "there would have been no Manchurian question. Were she to become truly strong, the question would be simplified." ("Japan in South Manchuria," address at Clark University, in: *Japan and Japanese-American Relations*, ed. by Geo. H. Blakeslee. *Vide*, p. 271.)

[17] Actually the official bars to Chinese immigration, erected and maintained by the alien Manchu dynasty, were removed in 1878. By 1900, it is estimated that the entire population of Manchuria was 14,000,000, and that, of these, 80 per cent. were Chinese. (*Vide*, Young: *Chinese Colonization and the Development of Manchuria.* This brochure is reprinted in: *Problems of the Pacific*, 1929, pp. 426-427.) Today well over 90 per cent. of the population of Manchuria, estimated to be about 27,000,000 in 1930, are Chinese.

churia became more closely linked with the capital than many provinces of " China proper ". Viceroy Hsü had more constitutional power than ordinary governors south of the Great Wall, and used it, both to make the Emperor's word law in the Manchurian marches and to embarrass the Russians and Japanese, whose political interests came sharply into conflict with those of the Chinese during the period from 1907 to 1910.[18]

Hsü Shih-chang was, however, removed from the viceregal post on February 9, 1909, Hsi Liang being appointed in his stead.[19] The latter sought, with

[18] The quotations from a Japanese scholar of repute, given below, will serve to illustrate the reality of the reforms decreed in 1907.

" It is interesting to note that at present the reactionary policy seems to be most effectively employed in Manchuria. In this region, whence, indeed, the present reigning dynasty arose, China's national sense has been more thoroughly kindled by the course of recent events than in any other part of her domain. As has already been said, the Manchurian provinces have lately been reorganized, and the able Hsü Shih-chang and Tao Shang-yi [T'ang Shao-yi] are the new Viceroy and Governor, respectively, of Mukden; the new local government law embodying several notable ideas of reform will first be put into force here; and it is here that the military forces will be greatly augmented, so as to be able to replace the Japanese and Russian railway guards as soon as possible." (Asakawa, K. *Yale Review,* Aug., 1908, p. 212.)

[19] The subsequent political careers of Hsü Shih-chang and T'ang Shao-yi are further evidences that when they were selected in 1907 for the Manchurian administrative posts the intention was to offer them to the ablest men available in China. Hsü Shih-chang became president of the Board of Communications in 1909; Grand Councillor of State in 1911; after the Republic, Minister of Interior in 1914; and finally, from September, 1918, to June, 1922, was President of China. He was given the degree of Doctor of Literature by the University of Paris.

somewhat less effectiveness, to continue the policy initiated by his predecessor, particularly of encouraging Chinese colonization of the frontiers. Hsi Liang, in turn, was replaced in April, 1911, by Chao Erh-hsün, who had been Viceroy of Szêchuan. Chao was an administrator among China's best. He was Viceroy when the Revolution broke in 1911, and it was he, supported by the strong arm of the late Marshal Chang Tso-lin, then commander of the Mukden Garrison, who kept Manchuria from the disorders which prevailed in the Yangtze valley where revolutionary armies marched under the banners of the Republican Revolution.

T'ang Shao-yi, who had had a distinguished political career before serving in Manchuria, having studied in Columbia University in the seventies and served under Yuan Shih-k'ai when the latter was Imperial Resident in Korea (1892), was relieved of the post of Governor of Fêngtien to proceed to Washington as a special envoy to thank the United States Government for remitting the Boxer Indemnity. Such, at least, was the official reason for his resignation. In fact, he went to the United States for the purpose of negotiating a loan with American bankers, having made preliminary arrangements, through the late Willard Straight, consul-general at Mukden, with the Harriman interests. Yuan Shih-k'ai lost power, however, thus raising questions as to T'ang's credentials; Japan interposed objections to the Manchurian loan and succeeded in negotiating the Root-Takahira agreement; Harriman later was prevented from investing heavily in Manchuria; while other factors contributed to the failure of the plans of Straight and T'ang. T'ang Shao-yi later held high office under the Manchus, but his subsequent political career deserves high credit particularly because of his support of the rising Kuomintang power in Canton. Since 1923 he has lived in semi-retirement either in Shanghai or in his native district in Kwangtung province. Until recently he served as special adviser of the National Government at Nanking. Today he is regarded as one of the impeccable "elder statesmen" who have served China with high distinction both under the old and the new régime.

Contrary to the expectations of most foreigners in Manchuria, those provinces did not become the scene of fighting or of civil disorder during the Chinese Revolution. What actually happened was that, mindful of the danger to the very integrity of the Chinese state in Manchuria, which might have followed from the contemporaneously strong policy of Japan there, those responsible at Mukden contrived to remain aloof from the turmoil south of the Great Wall, and while they took strong measures to maintain peace and order, kept a watchful eye on the course of the Revolution to the south.[20] Both Chao and Chang sympathized, at the outset, with the dynasty, but when the strength of the republican movement became evident, they threw in their lot, particularly because of loyalty to Yuan Shih-k'ai. Manchuria thus remained neutral until the Republic was an accomplished fact. There never was any serious move to secede, and, in consequence, even during this period when the tendencies of devolution elsewhere were at their zenith, Manchuria remained an integral part of China.

[20] "Time is ripening hourly for the declaration of independence of Mukden, in order to serve the interests of the Manchus", states an editorial in the Japanese English-language newspaper of Dairen. (*Manchuria Daily News*, Nov. 18, 1911.) Local officials had tendered their resignations to the Viceroy, thus disclaiming responsibility to the capital, but Viceroy Chao pigeon-holed them. Peace and Order Societies were established in leading Manchurian cities, over which Viceroy Chao was supervisor, with General Chang Tso-lin, the former captain of irregulars in the service of the Japanese in the Russo-Japanese war, as blood-and-iron commandant to enforce order.

In the post revolutionary period, when Manchuria was at times encouraged to break into separate satrapies due to the incapacity of the capital to control provincial affairs, Kirin and Heilungkiang provinces showed a tendency to autonomy. Viceroy Chao Erh-hsün, however, would have none of it. In April of 1912, this tendency was reflected in Peking in a movement to abolish the viceroyalty and re-establish the separate provincial governments of Kirin and Heilungkiang. Chao's services to the Republic, however, and his personal prestige, reënforced by the military support of Chang Tso-lin, cautioned the central government to reconsider. Yuan Shih-k'ai, then President of the Chinese Republic, loyal to his old friend, Chao, vested him with supreme military and civil authority over the whole of Manchuria.[21] The viceroyalty itself, however, was abolished, and in 1913 Chao resigned. Civil Governors were placed over each of the three Manchurian provinces with the Governor of Fêngtien at Mukden city as *primus inter pares*.[22]

[21] Chao Erh-hsün, who deserves to be remembered as one of the ablest of Chinese officials both under the dynasty and the Republic, retired from active political life in 1913, though even as late as 1925 he lent his prestige as an "elder statesman" of China to the Peking Reorganization Conference called by Tuan Ch'i-jui. He died at his home in Peking on September 3, 1927, at an advanced age. Marshal Chang Tso-lin, the able military executive who had enabled Chao as Viceroy to preserve peace and order during the trying times of the Revolution, was then dictator in Peking. To the Chinese who knew them both, the late Marshal Chang's generous provisions for Chao's funeral services, and for his only son, were but indicative of the mutual loyalty of these two patriots.

[22] *Vide: Manchuria Daily News*, April 22, and Sept. 7, 1912.

The resignation of Chao-Erh-hsün in 1913 marks the beginning of the official supremacy of General Chang Tso-lin over Manchuria, a supremacy, qualified much more in name than fact by such things as popular assemblies and guild representation. From then on, General Chang Tso-lin, as Military-Governor, and with periodic titles too numerous to mention, remained in uncontested supreme power in Manchuria until his untimely murder in June of 1928. In 1922, after the " spring war " with intramural Chinese forces, Chang Tso-lin declared the " independence " of Manchuria, an independence which was never, however, actually established in international law, and which ceased with Marshal Chang's declaration of allegiance in 1924. In January, 1926, he actually permitted his puppet provincial assembly to declare the " autonomy " of Manchuria, but independence was never made effective.

General Chang had no desire to establish diplomatic representation for Mukden in Tokyo, or elsewhere. The move was but a pronunciamento for home consumption, evidence of his authority, if such were necessary. For all purposes of local administration his government at Mukden was more or less *de facto* independent, but in major political matters, and almost invariably in foreign affairs, he permitted whatever central government happened to speak from Peking to deal with foreign states. Chang Tso-lin did enter into separate international

agreements with both Japan and Russia, however, in his own right, agreements which, as in the case of the accord with Soviet Russia of September, 1924, on the subject of the Chinese Eastern Railway, have been considered in binding force ever since. Twice Chang Tso-lin was nominal dictator of China, in 1926 and again in 1928 when he declared himself *Ta Yuan Shuai.* Always, however, Manchuria was his home bailiwick. The Mukden local régime has never had any intention of permanently separating from the rest of China by making a declaration of " independence " anything but a public proclamation of unquestionable *de facto* authority north of the Great Wall.

Since the murder of Marshal Chang Tso-lin in June, 1928, on his forced retirement from Peking to Mukden, and the establishment of the central government of China in Nanking, the administration of the Manchurian provinces and, additionally, that of Jehol, has been under the general supervision of Marshal Chang Hsueh-liang, son of Chang Tso-lin.[23] Inasmuch as the Japanese Government on May 18

[23] Upon the establishment of the Nationalist Government with its capital in Nanking the nomenclature of several provinces and cities in China was changed. In Manchuria the following were the significant changes: Jehol, which, like Chahar and Suiyuan, was formerly a Special Administrative District, became a province, as also the others mentioned. Jehol province was added to the former "Three Eastern Provinces" to make the "Four Northeastern Provinces". These include: Liaoning (formerly Fêngtien), Kirin, Heilungkiang and Jehol. Mukden city was formerly known as Fêngtien, but officially its name has now been changed to Shênyang.

had communicated a note to Chang Tso-lin and to opposing Chinese armies that " should disturbances develop further in the direction of Peking and Tientsin and the situation become so menacing as to threaten the peace and order of Manchuria, Japan may possibly be constrained to take appropriate, effective steps for maintenance of peace and order in Manchuria ", the Mukden régime found itself, following the murder of Chang Tso-lin, not in a position to declare complete administrative subordination to the central government at Nanking.[24] Representations were, in fact, made by Baron Gonsuke Hayashi, special envoy to Mukden, and by Mr. Kyujiro Hayashi, Japanese consul-general at Mukden, to advise Marshal Chang Hsueh-liang (August, 1928) not to hoist the Nationalist flag.[25] On December 28, however, the Mukden Government flew the flag of the central government over public buildings in the Manchurian administrative capital, and telegraphed to Nanking that " it had been decided to accept the ' San-Min-Chu-Yi ' and to submit to the authority of the National Government ".[26] This formal action was but an expression of the attitude of the Mukden *de facto* government which had been

[24] Quigley, H. S. " Chinese Nationalists Occupy Peking," in *Current History*, July, 1928, pp. 791-793. Also: Young, " Sino-Japanese Interests and Issues in Manchuria ", *Pacific Affairs*, December, 1928, pp. 4-5. Cf. *China Weekly Review*, May 26, 1928; *Peking Leader*, May 20, 1928; *Boston Transcript*, August 18, 1928.

[25] Cf. *Trans-Pacific*, September 15, 1928, p. 15; also *New York Times*, August 14, 1928; and *The Far Eastern Review*, August, 1928.

[26] *The China Weekly Review*, January 5, 1929, p. 252.

prevented from official announcement by extraneous circumstances. Instead of re-establishing the *de jure* authority of the capital over Manchuria, it served rather to symbolize its unbroken continuance.

Since January 1, 1929, the Mukden local régime has acknowledged the nominal authority of the Nationalist Government at Nanking. Even the existence of a *de facto* régime has been denied, though Mukden has been, in fact, quite autonomous for all purposes of internal administration. Nanking has made no appointments to administrative posts in Manchuria without the sanction or the previous nomination of Mukden. The title of Commander of the Northeastern Frontier Defense Forces was conferred on Marshal Chang Hsueh-liang by the central government, while he was immediately included in one of the committees of the Nationalist Government. Since 1929 the Manchurian provinces has remitted to the central government a portion of the revenues derived from the salt gabelle and from the maritime customs. Numerous Nanking regulations, as those pertaining to education, have been put into force in Manchuria. But these should not be taken as evidence that the Mukden authorities are less independent in administrative matters than they wish to be. In fact, all provincial appointments in Manchuria need but to have the sanction of Mukden or of the governors of Kirin or Heilungkiang provinces, to be entirely effective; the sanction of Nanking has been but formalistic.

This somewhat anomalous administrative position of Manchuria has served to create confusion as to the rôle of the Mukden authorities in conducting diplomatic relations with foreign states, especially with Soviet Russia and Japan. It is quite clear, however, that, while the authority of Nanking to conduct formal negotiations with foreign states has been recognized by Mukden, local offices in Mukden and Harbin actually do conduct preliminary negotiations on most vital questions of foreign policy. On January 13, 1929, the Mukden local régime notified foreign consular officials there that henceforth all matters relating to diplomatic questions must be taken up with Nanking, and not treated as local questions in Manchuria.[27] This has subsequently been the clear policy of the Manchurian régime, a policy of studied adherence to the principle that the National Government has *de jure* authority over Manchuria, as over any other integral part of China. This policy, however, has not prevented their political chiefs, through the Foreign Intercourse Office of Liaoning province at Mukden, and of Kirin province at Harbin, from conducting diplomatic negotiations, as with Soviet Russia over the Chinese Eastern Railway question during 1929-30, and with Japan over such questions as the status of Koreans in Manchuria. No formal treaties, however, have been negotiated by Mukden since 1928.

[27] *Pacific Affairs*, March, 1929, p. 132.

Following several months of non-intervention of the government of Marshal Chang Hsueh-liang with the course of the civil disturbances in " China proper ", on October 9, 1930, he was formally inducted by Nanking representatives into the office of Vice Commander of the Army, Navy and Air Forces of China. Following his non-ambiguous statement of policy on September 18, he had ordered Manchurian troops to occupy Tientsin and Peiping, acting in pursuance of an understanding with Nanking. During November he attended the Fourth Plenary Conference of the Kuomintang at Nanking, nominally as " observer ", but actually as Vice Commander of the military forces of China, and responsible chief of Manchuria and North China. This act of Marshal Chang Hsueh-liang served conclusively to show that the Mukden authorities had every intention to recognize not only the *de jure* authority of the central government of China over Manchuria, but also the *de facto* authority of Nanking, provided that the latter would be exercised through the already established local provincial officials who owed their positions mainly to Mukden.

The administrative organization of Manchuria is of lesser importance here than its legal and political relation to " China proper ". Briefly, however, for purposes of clarity, it may be said that the present Manchurian administrative system is modelled rather closely on that of intramural China. Marshal Chang Hsueh-liang is Governor-General of Man-

churia—including Jehol to make the "Four Northeastern Provinces". The Northeastern Political Council is an advisory body with power, however, in policy direction and in voting certain appropriations. Over each province the committee system of the National Government in theory, prevails, Liaoning (Fêngtien), Kirin, Heilungkiang and Jehol provinces each having a Provincial Government Committee, presided over by a Governor, who is in reality a military-governor. General Chang Tso-hsiang, Governor of Kirin and a powerful figure in the Northeastern Political Council, and General Wan Fu-lin, Governor of Heilungkiang, were on December 30, 1928, made vice commanders of the military forces of the National Government.[28] During 1931 local branches of the Kuomintang, or National People's Party, the oligarchy which dominates Nanking, were opened in Manchuria, and delegates were sent from Mukden to the "People's Convention" in May.

* * * *

Whatever the *attitude* of the *de facto* authorities in Manchuria toward the central government in China, it is quite clear that the *de jure* authority of that central government over these provinces has never been questioned. In this period of political ferment, when intramural China has been torn by the rivalries of more or less independent armies,

[28] Order of the State Council, Nanking, Dec. 30, 1928.

it is but natural that Manchuria, especially when remaining aloof from the conflict, should have been regarded as having an autonomous *de facto* government. In 1926, the Mukden authorities under the late Marshal Chang Tso-lin did establish *de facto* autonomy. This was not at the expense of questioning that Manchuria was for all purpose of international relations, an integral part of China. Since 1928 particularly, Manchuria, while exercising almost complete discretion in matters of internal administration, has never withdrawn from allegiance to the National Government whose capital is at Nanking. There are no indications at present that the legal status of Manchuria in the Chinese state will undergo any material changes in the near future, or that these provinces will tend to separate from China. If for no other reason, the very significant political interests of Japan and Russia, inextricably entangled with their economic interests there, would counsel a continuation of the sovereignty of China over Manchuria.

3. Manchuria, Not a Protectorate. The mis-application of the term " protectorate " to Manchuria, as also of the terms " virtual protectorate " and " sphere of influence ", is due perhaps more to a lack of appreciation of the true meaning of the term in international law than to intentional misuse. No good purpose would be served by citing instances of such careless misuse of fairly clear legal terms in attempts to describe the position of Manchuria.

These cases are, however, far too common, the more liberal language of journalism having actually influenced that of the scholar. It has frequently been asserted, therefore, that Japan has at one time or other established a " protectorate " over Manchuria, in particular over that portion designated without description as " South Manchuria ", Russia having been presumed to have had a similar " protectorate " over " North Manchuria ". Neither of these two states has ever established any form of protectorate over Manchuria, either in entirety or in part.

Protectorates are, to be sure, ill-defined in international law. The term, to quote Oppenheim, " lacks exact juristic precision ", and it may be added that the publicists are not in entire agreement as to just what constitutes a protectorate, or what various forms it may take.[29] Oppenheim gives this definition: " It happens that a weak State surrenders itself by treaty into the protection of a strong and mighty State in such a way that it transfers the management of all its more important international affairs to the protecting State." [30] Some authorities distinguish between a " real protectorate " and a " colonial protectorate ", but there is general agreement among them on the point which may be taken to be the principal characteristic of a protectorate of whatever

[29] Oppenheim, *International Law, a treatise*, Vol. I, p. 145. 2nd ed.
[30] *Op. cit.*, Vol. I, p. 144.

nature.[31] Protectorates usually imply, as is evident from the term itself, "a kind of international guardianship", to quote Oppenheim, a situation wherein an outside state undertakes to protect another state or territory from possible aggression from a third state, and to this end exercises a very broad control over all matters of foreign relations affecting that state or territory. It follows that a certain degree of surveillance over the internal affairs of the protected territory becomes necessary. Moreover, as a matter of fact, protectorates are usually the result of an international agreement between the protected state and the one assuming the duty of surveillance over the protectorate. Not infrequently this situation is guaranteed by third party states, or even by general consent of states.

It is in the above general sense that the term "protectorate" came into accepted usage in Africa, especially during the last quarter of the nineteenth

[31] Westlake, for example, distinguishes between a real protectorate and a colonial protectorate, the former being considered a territory within which a foreign state may have been given some control over internal affairs, but, invariably, practically absolute control over the conduct of foreign relations for that territory. (Westlake, J. *International Law*, Vol. I, p. 122.) He defines a colonial protectorate as "a region in which there is no state of international law to be protected", but a territory within which the political organization may be primitive or on tribal lines. (*Op. cit.*, pp. 123-124.) Lawrence, on the other hand, draws no distinction between these two types of protectorate, characterizing them simply as instances "where the protecting power exercises full control over all external affairs, and leaves internal matters in a greater or less degree to the native administration". (Lawrence, T. J. *Principles of International Law*, pp. 162-163. 3rd ed., 1906.)

century. In China there has been no parallel with the situation in Africa where the tribal social organization, the relatively primitive development of political institutions, the indefiniteness of territorial boundary lines, and the actual absorption through annexation of surrounding African territories by European powers, brought about a situation where certain areas were designated "protectorates", under one or another power, to establish some form of political equilibrium in a continent which had already been partitioned.

African experience led publicists to observe that the establishment of protectorates usually led to annexation.[32] It was perhaps the anxiety felt by some that Manchuria, in whole or in part, was tending toward annexation either by Russia or Japan that influenced writers to refer to that territory of

[32] Wilson, G. G. *International Law*, p. 59. The "colonial protectorates", established in pursuance of the General Act of the West African Conference attached to the Treaty of Berlin in 1885, were, in the main, but stepping-stones to annexation. The following are some of the better-known examples of protectorates which have existed in Africa and elsewhere: Madagascar (French protectorate from 1890 until annexation in 1896); Morocco (French protectorate after 1911); Northern Nigeria (British protectorate after 1885); Rhodesia (British protectorate, especially after 1911); German East Africa (German protectorate, recognized by Great Britain after 1890, but lost by Germany since the war). The Ionian Islands (1815-1863), under British protection, is an illustration of a real, as distinct from a colonial, protectorate. For a listing of these protectorates and their various forms, refer to the following: Willoughby, W. W., and Fenwick, C. G., *Types of Restricted Sovereignty*. For a description of many of these, see: Harris, N. D., *Intervention and Colonization in Africa*, 1st ed.

China as a protectorate. The fact that Japan actually possesses the Kwantung leased territory in the south of Manchuria, that Japan exercises broad jurisdictional authority over the so-called railway towns in the South Manchuria Railway area, and that in 1915 the Japanese Government sought to obtain China's consent to numerous demands which would have materially increased the jurisdictional rights of Japan in Manchuria, as well as in so-called Eastern Inner Mongolia, these have reënforced the opinions of those who would re-define the term " protectorate " to suit Manchuria.

Two additional factors have also contributed to create the impression that Japan has sought to establish a protectorate over Manchuria. In the first place, it has been widely assumed, and not without some justification at times, that the Japanese Government have sought to exercise some form of control over the foreign relations of the local authorities in Mukden, and, in the second place, that the declarations of the Japanese Government, notably in January of 1925 and between March and September of 1928, to the effect that Japan would not tolerate the spread of civil war in Manchuria from intramural China, meant, in fact, that Japan had accepted a self-imposed " protectorate " over Manchuria. The case of Korea has been cited as a possible indicator of what might become of Manchuria, or a part of it. Korea was an independent state from 1895 to 1905; it was a protectorate of Japan from 1905 to

1910. In 1910 it was annexed to Japan and became Chosen, a part of the colonial empire of Japan.

Whatever the superficial similarities to true protectorates, however, it must be apparent that at no time has Manchuria afforded any parallel to the territories in Africa where the term " protectorate " was properly applied. Manchuria's foreign relations have never been subject, either by treaty or in fact, to dictation or control by either Russia or Japan. Strong political pressure has been exercised from the outside on the Mukden authorities, but never of a character beyond such as was devised to secure definite political or economic interests of the outside state. The very fact that such pressure has periodically been brought to bear upon Mukden from the outside should disprove the assumption that Mukden's foreign affairs have been subject to outside surveillance. In recent years the Mukden authorities have shown a tendency to turn most matters connected with foreign diplomacy over to the proper agency of the National Government at Nanking.

Whatever, also, the extent of influence of foreign advisers or of foreign influences in internal administration in Manchuria, it is equally true that in Manchuria such advisers or other influences have never brought this territory to the status of a protectorate. In 1915 the Japanese Government did seek to secure a partial control over internal administration in Manchuria—as elsewhere in China—especially in the matter of exercising a check on the use of pro-

vincial revenues, as from the maritime customs, the salt gabelle, and the tobacco and wine taxes, as well as in the appointment of Japanese military and financial advisers. But the results obtained fell far short of acquiring a protectorate over the territory.

The Mukden local régime, for many years, has had Japanese military advisers, including Majors Banzai, Machino, Giga and Matsui, but China refused to grant the Japanese request of 1915 that Japanese advisers should be exclusively employed.[38] In fact, advisers, both military and political have been employed from among other foreign nationals, British, French, Belgian, Russian and American, including, for example, " General " Sutton, the Englishman, and Carleton Baker, the American. The presence of such advisers does not necessarily operate to reduce the independence of the Mukden Government. Foreign advisers have been employed for one purpose or another by many entirely independent states, as by the Japanese Foreign Office, a situation which has no relation to the independence of the state employing them. Foreign advisers are numerous in the present National Government of China at Nanking.

Finally, Manchuria is wrongly regarded as a protectorate of any foreign state for the obvious reason that no foreign state has undertaken to exercise a protecting power over that territory as against

[38] *The Sino-Japanese Negotiations of 1915* (Carnegie Endowment for International Peace, Washington, D. C., 1921), pp. 2-8.

aggression from a third state. Bilateral international agreements, such as the Russo-Japanese conventions and secret treaties of 1907, 1910, 1912 and 1916, mutually guaranteeing what was tantamount to their claimed " spheres of interest " in " North Manchuria " and " South Manchuria ", have been of a character rather to protect the interests of the foreign states concerned than to assume any responsibility for the protection of Manchuria or of Chinese territorial integrity there. The Chinese in Manchuria have had to fight their own battles, military and diplomatic. Japan has not undertaken to support China against a Soviet Russia intent upon maintaining its position in the Chinese Eastern Railway in Manchuria, nor has Soviet Russia undertaken to advise Japan to keep her troops out of the territory on the Chinese side of the Manchurian-Chosen border.

At no time since 1915 has there been more misuse of the term " protectorate " as applied to Manchuria than during 1928 when the Japanese Government declared that Japan would undertake to prevent the spread of civil war to Manchuria from intramural China. The famous declaration of the Japanese Foreign Office on May 18, 1928, which will be cited elsewhere in discussing the application of the term " sphere of interest " to Manchuria, had no other purpose than to declare a policy presumed to be necessary " to prevent, as far as possible, defeated troops or those in pursuit of them, regardless

of whether they are Northern or Southern troops, from entering Manchuria", and, by so doing, to pursue a policy deemed to be "necessary for the protection of the special position of Japan in Manchuria and Mongolia."[34] This position of the Japanese Government brought forth much "speculation as to whether Japan intended to declare a protectorate over Manchuria".[35]

Whatever Japan's intention under the government of the late General Baron Tanaka in the summer of 1928, what resulted was certainly not the assumption of a protectorate over Manchuria. If regard be had for correct use of legal language, it must be evident that neither Japan, nor any other foreign state, has ever possessed a protectorate over that territory. No less inaccurate is the employment of the term "virtual protectorate" to Manchuria,

[34] *Current History,* July, 1928, p. 702. The latter part of the quotation is from the official explanation of the Japanese Foreign Office made to ambassadors of the foreign powers at Tokyo.

[35] *Ibid.* In fact, a veritable storm of criticism and of misuse of terminology accompanied Japan's action at that time. Dr. C. C. Wu, speaking "unofficially but as an official"—being Chinese Minister at Washington—at the Williamstown Institute of Politics in 1928, asserted that Japan's action constituted a violation of the Washington Nine Power treaty of 1922 respecting China and concluded that "a protectorate will be established in Manchuria, and later annexation". (The *Boston Transcript,* Aug. 18, 1928.) The *Peking Leader* (May 20, 1928), in a front page editorial, took a similar view: "Japan intends to take control of the whole of Manchuria." "Japan is preparing to assume an exclusive protectorate over Manchuria and Mongolia." The *China Weekly Review* (May 26, 1928) took the position that Japan had already established a protectorate over Manchuria and had violated the Washington agreements by so doing.

for if the term means anything—and among careful students of international law it has no generally accepted usage—it means that *in effect* an outside state exercises wide powers over the diplomacy of the " protected " state. There may be justification for the employment of some such term to the relation of the United States to Cuba, Panama, Nicaragua, Santo Domingo and Haiti, but, in each of these cases, the rights of supervision over foreign affairs, or over internal finances, have been granted by bilateral agreements with those countries, and consequently, they furnish no parallels to Manchuria. The characterization " sub-colony ", so frequently employed by the late Dr. Sun Yat-sen as applied to China, was, of course, a coined word having no legal usage—indicating a freedom with foreign terminology which is common in Eastern Asia. His reference to Manchuria as a " protectorate " of Japan was no less inaccurate.

4. Manchuria—Sphere of Influence or Interest? The frequent reference to Manchuria as a " sphere of influence " of Japan or Russia is readily explainable by the strong position of each of these powers there and by the confusion which since 1897 has existed in the Far East over the two terms, " sphere of influence " and " sphere of interest ". In fact, the widespread, even official, use of the term " sphere of influence ", as applied to the somewhat vague earmarkings of territory in China by foreign states during the last decade of the nineteenth century,

has actually influenced the very definition of that term in the writings of recognized publicists in international law. The term " sphere of influence ", however, came into current usage a decade or so earlier in Africa, and the publicists are generally agreed that technically a distinction should be drawn between that term and a " sphere of interest ".[36] If this distinction had been maintained during and since the period of so-called " race for concessions " in China from 1897 to 1900 the term " sphere of interest " would have tended to replace entirely that of " sphere of influence ", and it would be evident that the latter term would have had no accurate application to China at all.[37] There would then have been but little confusion on the subject as to whether Japan, for example, at any time actually possessed a " sphere of influence " in Manchuria. It may be added, also, that this distinction is by no means only a technical one of purely academic importance: when Secretary Lansing declined to concede to Viscount Ishii in 1917 that Japan should

[36] " The term 'Sphere of Influence' has been frequently, but, it is believed, never officially, employed in China, as synonymous with the term 'Sphere of Interest'." (Willoughby, W. W. *Foreign Rights and Interests in China,* Vol. I, pp. 130-131.)

[37] The contrary was the case, however, for, just as in the initial correspondence of John Hay, as American Secretary of State in 1899, relative to securing the commitments of interested states to the so-called policy of the " open door " in China, he used the terms more or less interchangeably, so also, even as late as the Washington Conference (1921-1922), official usage and even the formal resolutions of the Conference, substituted erroneously the term " sphere of influence ", for the proper term, " sphere of interest ".

be recognized as having " special influence " in Manchuria it was because that term implied something quite different from an economic position, established in prior valid treaty agreements, commercial concessions and prior rights acquired from China, such as are legitimately understood to be recognized by the term " sphere of interest ".[38]

Although these distinctions are not always sharply drawn by the publicists, and are hopelessly confused by less critical writers, it is quite possible, by referring to their recognized usage in Africa in the last two decades of the nineteenth century, to distinguish between them. The term " sphere of influence ", like that of " colonial protectorate ", had its most frequent and accepted use in Africa after the Berlin Conference of 1885. Its use is illustrated, for example, by the acquisition of " spheres of influence " in the Nile valley under the terms of the Anglo-German agreement of July 1, 1890.[39] One of

[38] *U. S. For. Rels.*, 1917, p. 261. Secretary Lansing also took exception to the communication of Viscount Ishii to the Japanese Foreign Office to the effect that the United States was willing to recognize the " paramount interests " of Japan in Manchuria. Throughout these negotiations the American Department of State carefully avoided conceding that Japan had a " sphere of influence " in Manchuria. This subject is considered in context and at length in subsequent sections of this book.

[39] Westlake, *op. cit.*, Vol. I, p. 130. The most important diplomatic incident connected with the question of rights under " spheres of influence " was, of course, the Fashoda Incident on the Nile in 1898. Two excellent discussions of " spheres of influence " may be found in: Harris, N. D. *Intervention and Colonization in Africa, passim;* and, Lugard, (Sir) Frederick, *The Dual Mandate in British Tropical Africa,* Chaps. I and II.

the clearest definitions of a " sphere of influence " is that of Professor Lawrence: " Over territory included in the sphere of influence of a state it does not necessarily exercise direct control, either in external or internal affairs; but it claims that other states shall not acquire dominion or establish protectorates therein, whereas it is free to do so if it chooses." [40]

Among the recognized publicists, therefore, there would seem to be almost complete agreement in defining a " sphere of influence " to include the following considerations. A sphere of influence is a piece of territory, usually adjacent to the possessions or protectorate of a foreign state, but which has neither been acquired as a protectorate, nor reduced to control by that foreign state in matters of foreign relations or internal administration. Within said sphere of influence the specified foreign state is

[40] Lawrence, T. J. *Principles of International Law,* pp. 164-165. Great Britain and Germany, for example, covenanted in 1890, that " one power will not in the sphere of the other make acquisitions, conclude treaties, accept sovereign rights or protectorates, nor hinder the extension of influence of the other". (*British State Papers, Africa,* No. 6, p. 8, 1890.)

Cobbett thus defined a sphere of influence: "A Sphere of Influence, so far as it can be said to possess a definite meaning, indicates a region, generally inhabited by races of inferior civilization, over which a State seeks, by compact with some other State or States that might otherwise compete with it, to secure to itself an exclusive right of making future acquisitions of territory (whether by annexation or by the establishment of protectorates), and, generally, also the direction and control of the native inhabitants." (*Cases and Opinions on International Law,* Vol. I, p. 113. 3rd ed. Cited by Willoughby, *op. cit.,* p. 131.)

understood to reserve to itself the right of excluding other foreign influence or acquisition of territory, while maintaining for itself the right of future expansion there, either by transforming the sphere into a formal protectorate, or by unqualified annexation. As such, a sphere of influence always connotes distinct political influence or position, and it is this characteristic, combined with the generally understood right of freedom of action to absorb the territory, which distinguishes it from a sphere of interest, which latter generally refers to commercial and financial priority of rights only.[41]

Two outside states may thus covenant to establish either a " sphere of influence " or a " sphere

[41] W. E. Hall's definition of a sphere of influence may be taken as representative and clear: ". . . the regions which geographically are adjacent to, or politically group themselves naturally with, possessions or protectorates, but which have not actually been so reduced into control that the minimum of the powers which are implied in a protectorate can be exercised with tolerable regularity. It represents an understanding which enables a state to reserve to itself a right of excluding other European powers from territories that are of importance to it, politically as affording means of future expansion to its existing dominions or protectorates, or strategically as preventing civilized neighbours from occupying a dominant military position." (*Foreign Powers and Jurisdiction of the British Crown*, p. 228; also cited by Tyau, M. T. Z., *op. cit.*, pp. 88-89.)

Oppenheim defines them as follows: " Spheres of influence are, therefore, the names of such territories as are exclusively reserved for future occupation on the part of a Power which has effectively occupied adjoining territories." (Oppenheim, *op. cit.*, Vol. I, p. 297.) Professor George Grafton Wilson similarly explains that the concept of spheres of influence was a corollary of, if not identical with, the German doctrine of the " Hinterland ". Such territories were usually ear-marked for future occupation entirely at the discretion of the acquiring state, such an area thus being " a sort of attenuated protectorate ". (Wilson, G. G., *op. cit.*, p. 113.)

of interest " in a designated territory, but it does not follow, of course, that the agreement in either case has any binding effect upon the independent action of the state having sovereignty over that territory. The sovereign state may, however, be a party to such an agreement. Finally, a " declaration of non-alienation " of a specific portion of territory, agreed to by the sovereign state with a foreign state —and such agreements were several in the case of China during 1897 to 1899—while it binds the sovereign state not to alienate the territory to a third party, does not, even by inference, concede the right of ultimate political absorption of such territory by the state receiving the declaration of non-alienation.[42]

If the above characterization of a " sphere of influence " be accepted—and it is generally accepted by the publicists—then it would seem evident that neither in China in general, nor in Manchuria in particular, have there been " spheres of influence ". Westlake, for one, clearly distinguished between the sphere of " influence " and of " interest ", holding that the declarations of non-alienation of territory, granted by China to the powers between 1897 and

[42] I find myself in complete agreement with Dr. M. T. Z. Tyau in his interpretation of the reserved rights of China under these declarations of non-alienation. By the same token, I find it impossible to agree that the term " sphere of influence " has any accurate application to the territories designated by these declarations of non-alienation. (Cf. Tyau, M. T. Z. *The Legal Obligations Arising Out of Treaty Relations between China and Other States*, pp. 87-91.)

1899 are " more correctly described as of interest rather than of influence ".[43] The right eventually to absorb such territories is at best " a questionable reversionary right ", i. e., quite capable of protestation by China, the unquestioned rights granted the acquiring state being principally commercial, as to construct railways or develop mines with the capital and technical skill of the foreign state.[44]

It is somewhat surprising, in spite of the obvious reasons for confusing these two terms, that the official correspondence of foreign offices, including the American in John Hay's day, should have failed to differentiate them. In the first Hay " open door " note (September 6, 1899) to the British Foreign Office, transmitted *mutatis mutandis* to the other powers, the matter was hopelessly confused: it drew attention to the fact that the powers had obtained

[43] Westlake, *op. cit.*, Vol. I, p. 132.

[44] Westlake, p. 132. Dr. Tyau's view is similar. (Tyau, *op. cit.*, pp. 90-91.) Since such is the case, it would seem more accurate not to refer to the situation in China as involving " spheres of influence " at all, but to designate these territories as " spheres of interest ". Dr. M. J. Bau accepts the view that " the sphere of influence or interest as claimed by the Powers in China are nothing more than spheres of interest, wherein the claimant Powers maintain priority in economic exploitation, and oppose the inroads of other foreign influences." (Bau, *The Foreign Relations of China*, p. 337, 1st ed.) In subsequent sections, however, he continually uses the term " sphere of influence " as if the distinction he draws were of little significance. The same interchange of these terms is evident in his more recent book: *The Open Door Doctrine in Relation to China.*

Reverting to Cobbett's definition of a sphere of influence, Dr. Willoughby writes: " It is clearly evident that, as thus defined, the term Sphere of Influence has no application to China." (*Op. cit.*, Vol. I, p. 131.)

" spheres of influence or interest " in China, within which they had acquired " special rights and privileges " especially in respect to railroads and mining enterprises; it expressed anxiety lest American citizens be deprived of fair opportunity to compete in trade within the " spheres of interest " in China; and concluded with a request that the powers, " each in its respective spheres of interest or influence ", make certain commitments to insure equality of opportunity for the trade of all nationals.[45] It is equally surprising that the European powers replying to that communication should not have made a clear distinction between the terms. France alone did make such a distinction, objecting to the term " spheres of influence " on the ground that it was a misnomer, perhaps with a clearer regard for the accepted use of that term in Africa.[46] As for the political leases of territory in China, such as Weihaiwei and Liaotung, while their unique character in international law was recognized by a few writers, such as Professor Lawrence, they, to be sure, were

[45] *U. S. For. Rels.*, 1899, pp. 131-133. MacMurray, Vol. I, p. 224.

[46] *U. S. For. Rels.*, 1899, p. 128. MacMurray, Vol. I, p. 222. Lord Charles Beresford, who returned from a tour in China by way of the United States in early 1899, is perhaps principally responsible for contributing to the confusion in the use of these two terms. His historic volume published that year refers erroneously to " spheres of influence " in China. (Beresford, Lord. *Break-Up of China.* Cf. pp. 259, 215-217; 235, 325, etc.) Sir William Harcourt had expressed anxiety in Parliament on April 27, 1898, that there *might be created* " spheres of influence " in China. (*Parl. Debates,* 4th Ser., Vol. 56, p. 1560.)

thought by many to be but preliminary stages in annexation. But these leased territories were properly distinguished from spheres of influence.[47]

Had not this confusion continued to and through the Washington Conference in 1921-1922, and were there not now an unfortunate survival of this unjustifiable interchanging of " spheres of influence " and " spheres of interest " in official correspondence respecting China, including Manchuria, this somewhat technical historical material might have been avoided. Had this distinction been observed at the Washington Conference there would have been no reason for denouncing, in the Nine-Power Treaty relating to principles and policies to be followed in matters concerning China, " spheres of influence ", which all delegates agreed did not exist there.[48] What the clause should have denounced was monopolistic " spheres of interest ", the very context of the article showing that what was aimed at was a statement in denunciation of claims of monopolistic commercial rights in specific areas.

As for the application of the term " sphere of influence " to Manchuria, it may be said that such

[47] *Ref.* Young: *The International Legal Status of the Kwantung Leased Territory, passim.*

[48] Article IV. " The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory." (*Conference Proceedings,* pp. 1621-1629; Willoughby, W. W., *China at the Conference,* p. 372.)

use has been no more justified than elsewhere in China. Except for the vague reference to " spheres of influence " in the Hay correspondence of 1899-1901 to describe Russia's position there, it is evident that bilateral agreements, as the four Russo-Japanese conventions and secret treaties attached (1907, 1910, 1912, 1916) relating to Manchuria, refer to the respective " spheres of interest " or " railway spheres " in that territory. Whatever the commitments of the period before the Washington Conference, however, or before the negotiations from 1919 to 1921 conducted in conjunction with the representatives of the International Banking Consortium respecting Manchuria, today it is evident that no state either claims or possesses a " sphere of influence " in Manchuria or any part of it.

The term " sphere of interest " has been properly applied to specific areas in China—the British sphere in the Yangtze valley, the German in Shantung, and the Russian in Manchuria before 1904, for example—but it is quite obvious that, as applied to China, the expression has always had a meaning quite different from the same expression when used to apply to Africa. Most apparently is this distinction evident in the fact that the application of the term to China has been, in the main, descriptive of purely economic interests. That these economic " spheres of interest " in China have also been associated with certain political influence, even special political privileges, as in Japan's claim of right to

have military advisers appointed by the Chinese Government in Manchuria, is, of course, apparent, but it is significant that other foreign powers have, as a rule, not conceded such privileges, and have refused to be bound by bilateral agreements of others, even when China has been a party to them.[49]

When, therefore, the various powers recognized by implication the existence of so-called "spheres of influence or interest" in China in the exchanges of notes initiated by Secretary John Hay in 1899, it is quite evident that they did not by so doing recognize any special political rights or paramountcy of particular powers in given areas so designated. Even such preferential economic position as was recognized in them was, furthermore, somewhat mitigated by the specific guarantees of the replying powers with respect to equal treatment in such matters as harbor dues, customs and freight rates.

[49] The "spheres of interest" in China were confined, in the main, to the following considerations: Within such areas China agreed that no part of it would be alienated to a third state. Within them, either by agreements with China, or with third states, a foreign power obtained special economic privileges, such as prior or exclusive rights to finance the construction of railways, develop mines, and otherwise furnish such foreign loans as might be required for the development of the area economically. They were, in a phrase, especially exclusive concession areas. Professor John Donaldson correctly states the situation thus: ". . . . It should further be noted that in general practice there has been a fairly well-marked distinction between spheres of influence and spheres of interest, in that the former phrase has been used more often with reference to Africa, and the latter with reference to Asia, and also in that the former has had somewhat more political significance than the latter." (*International Economic Relations*, p. 147.)

Especially at the Washington Conference in 1921-22 was the principle established, having the formal approval of all the powers represented, including China, that there should be no exclusive or monopolistic " spheres of interest " in China.[50] The fact is, however, that, by virtue of particular agreements with China, by an accumulated body of private or semi-official railway loan agreements, and by hypothecation of local revenues for the service of administrative loans abroad, a situation has evolved, notably in Manchuria, where without a clear recognition of a still existing sphere of interest, very broad privileges, approaching a monopoly of exploitation with foreign capital, have become established. The rise and decline of those privileges, especially those of Japan in Manchuria, will concern us throughout the ensuing sections.

[50] *Conference Proceedings,* pp. 1621-1629.

CHAPTER II

Russian and Japanese Spheres of Railway Interest

1. The Early Russian Sphere: 1896-1904. Few recognized in 1900 that Japan was the heir apparent to the Russian rights in southern Manchuria. The Russo-Japanese war, as is well known, left Japan in possession, under the treaty of Portsmouth of 1905, of the former Russian rights in that part of Manchuria which lies south of Changchun, the present junction point of the two independent railway systems, the Chinese Eastern and the South Manchuria railways. Inasmuch as Japan obtained by the treaty of Portsmouth the transfer of all the former Russian rights in connection with the Kwantung leased territory and the railway south of Changchun (more accurately south from Kuanchengtzu, a little to the north of Changchun), it is important to inquire just what were the Russian rights in South Manchuria before the war.

For the purpose of our inquiry here it is possible to exclude the question of the Kwantung leased territory entirely, inasmuch as this, being an international political lease, has a legal status of its own, and the fact of its possession by either Russia or Japan did not constitute grounds for a claim of a sphere of interest in adjoining territory of Man-

churia.[1] The question of the Russian railway rights, however, is of major importance, for it is to such valid legal claims to a sphere of interest which Russia possessed, under agreements with China especially, previous to 1904, that one must go for the legal basis for Japan's initial claims thereafter. The Tsarist Government transferred to Japan at Portsmouth not only the southern section of the Chinese Eastern Railway itself, but, as provided in Article 6 of that treaty, additionally "all rights, privileges and properties appertaining thereto in that region, as well as all coal mines in the said region belonging to or worked for the benefit of the railway".[2] Thus, in case the Russian Government had formerly held railway loan agreements, construction contracts, or other prior options of a financial character in so-called South Manchuria, these, as well as the material properties and the right of way of the main line of the southern branch of the Chinese Eastern Railway, were renounced in favor of Japan. The Chinese Government consented to these transfers in the Sino-Japanese treaty of December 22, 1905.[3]

[1] A slight exception may be noted in the case of the so-called "neutral zone" to the north of the leased territory, within which the lessee state obtained the prior right to finance developmental projects of an economic character. As a matter of fact, the right has so far been inconsequential, as this small area is economically poor and there has been no material exploitation by foreign capital within it.

[2] MacMurray, Vol. I, p. 523. The wording in the last phrase is presumptuous: Russia had no power to transfer the mines which were merely "worked for the benefit of the railway".

[3] *Ibidem*, p. 550.

The most meaningful of the Russian rights to economic exploitation of Manchuria, as well as the most consequential of their political rights, were associated with the contract agreements for the construction and operation of the Chinese Eastern Railway, including the Russo-Chinese bank contract for the construction of the main line, the North Manchurian short-cut, dated September 8, 1896, and, second, the Chinese Eastern Railway contract for the construction of the southern branch to Port Arthur, dated July 6, 1898.[4] Neither of these contracts gave either the Russian Government or the Chinese Eastern Railway Company any blanket right of prior option to finance the construction of *other* railways in Manchuria. Ancillary economic privileges, such as for exploitation of coal mines, were restricted to such as were contiguous to these lines. The result, therefore, fell short of conceding to Russia a sphere of economic interest, even of railway interest exclusively, in Manchuria, or in any designated portion of that territory.[5] Thus, it is ap-

[4] MacMurray, Vol. I, pp. 74, 154.

[5] These Russo-Chinese railway contract agreements of 1896 and 1898, and their relation particularly to political administrative rights in the areas traversed by them, are dealt with in detail in the writer's volume in this series titled: *Japanese Jurisdiction in the South Manchuria Railway Areas,* Chaps. I and II.

A clause, contained in the supplementary agreement of May 7, 1898, which defined the boundaries of the Liaotung leased territory, can hardly be taken as a blanket promise on the part of China to refrain from obtaining foreign capital for any and all railways in Manchuria. The clause merely provided that "railway privileges in districts traversed by this branch line [the southern branch of the

parent that Russia's claim to a sphere of interest in Manchuria before 1904, if by the term one means to conform to the accepted international legal definition, could not have been derived solely from these primary railway contract agreements.

Russia may be said to have actually acquired a legitimate claim to a sphere of interest in Manchuria in 1899. This came about as a result not of a single act of China, or of other powers, but rather as a product of an accumulation of several international agreements. The steps to this end may be summarized briefly as follows: In 1896 Russia and China signed the so-called Li-Lobanoff treaty of alliance, which was directed against Japan, and which was to be effective only if and when China signed a specific contract agreement, giving Russia, nominally the Russo-Chinese Bank, the concession for the Manchurian short-cut of the Trans-Siberian.[6] Then followed the specific Russo-Chinese Bank railway contract of September 8, 1896, to which we have just referred. In 1898 Russia obtained the lease of the Liaotung territory, and in that lease convention the right to construct the southern branch to Port Arthur. Shortly thereafter the contract for the southern branch was given to the Chinese Eastern Railway Company.

C. E. R.] shall not be given to the subjects of other Powers". (MacMurray, Vol. I, p. 127.)

[6] MacMurray, Vol. I, p. 81. For a discussion of the authenticity of this treaty of alliance, which has now been established beyond question, reference may be made to the author's: *The International Relations of Manchuria*, Appendix A.

Upon this foundation the sphere of interest obtained in 1899 was developed, first by obtaining British recognition to a practically exclusive Russian sphere north of the Great Wall, then by a secret Russo-Chinese agreement to the same effect, and, finally, by virtue of the general recognition which was impliedly given in the exchanges known as the "Hay notes" of 1899. Thus, as is usual with the development of spheres of interest in the territory of another, the claim of Russia to such a sphere was derived both from specific agreements with the sovereign of the territory, and from agreements with third party states.

Generalities, however, are of little consequence in an attempt at analysis of international legal rights in specific situations. To describe the Russian position in Manchuria before 1904 merely as one evidencing a sphere of interest is of small value to the financier of a third state who may wish to know just how far his countrymen, or his government, were excluded from participating in financing a railway in one or another part of that territory. "General propositions", in the language of Mr. Justice Holmes of the United States Supreme Court, "do not decide concrete cases". The question, then, is whether Russia actually obtained in 1899 specific commitments from China and the powers which would enable her to exclude all foreign finance from Manchuria.

There existed, prior to 1899, but one contract of a foreign and non-Russian firm which applied to this area. That was the preliminary loan contract for the construction with British capital of an extension of the Peking-Tientsin-Shanhaikwan railway into Manchuria. This had been obtained by the Hongkong and Shanghai Banking Corporation from the Chinese Government by the agreement of June 7, 1898.[7] The contract, moreover, applied alike to any and all branch lines which might be projected from that system in southern Manchuria. This arrangement, it should be noted, differed materially from later Russian railway contract agreements in that it was negotiated by a purely private business firm, without any form of governmental guarantee by Great Britain.

There has always been some question as to the priority, in point of time, of the contract of the British firm for the construction of the extension of the Shanhaikwan line, and a promise evidently given the Russians that, if a line were to be constructed between Newchang and Shanhaikwan, it should be

[7] MacMurray, Vol. I, p. 179. *China*, No. 2, 1899, pp. 4-5. A formal loan agreement was signed on October 10, 1898, by the Chinese Administrator General of the Imperial Railways of North China and, on the British side, by the Hongkong and Shanghai Bank, representing the firm of Jardine, Matheson and Company, the two together representing as joint agents the British and Chinese Corporation, Ltd. By this loan agreement the British and Chinese Corporation, Ltd., offered to loan the Chinese Government £2,300,000 for 45 years at 5 per cent, secured on the railway properties and revenues, the line itself to be constructed by October 10, 1901. (*China*, No. 2, 1899, pp. 29 ff.)

financed with purely Chinese capital and was to remain in Chinese control and possession. There is, furthermore, considerable evidence that the Tsungli Yamen, which during this period was notorious for substituting intrigue for legitimate diplomatic negotiation, made promises to both the British and Russian interests, fully anticipating a possible conflict between them.[8] What is quite evident, however, is that the Hongkong and Shanghai Banking Corporation actually began negotiations for a loan contract agreement to finance the construction of lines north from Shanhaikwan into Manchuria in April, 1898, and that, at that time, the Russian Government were without any specific agreement which could be invoked to force the contract to be given to the Russians.[9] At all events, the British and Chinese Corporation obtained a definitive contract agreement on October 10, 1898.[10]

[8] *Vide: China,* No. 2, 1899, pp. 10 ff.

[9] Cf. *China,* No. 2, 1899, p. 11. The British Government pointed out that the British claim had priority. Sir C. Scott, British Ambassador at St. Petersburg was instructed by the Foreign Office to convey the substance of the following instructions to the Russian Foreign Office: ". . . . The Russian Minister for Foreign Affairs seems to be in error in supposing that the Russo-Chinese Agreement about Newchwang Railway preceded interest which Hongkong and Shanghai Bank takes in it. The offer of Chinese Director-General to latter was made before the 25th April, and the consequent negotiations were in progress before M. Pavloff signed his Agreement with the Tsungli Yamen." (*China,* No. 2, 1879, p. 8, No. 18.)

[10] *Ibid.,* pp. 29 ff. Text as given to the British Foreign Office. It is also evident that, in the agreement of May 7, 1898, between China and Russia concerning the delimitation of the boundaries of the leased territory, Russia specifically agreed that "as regards the rail-

Throughout this period from the signing of the preliminary agreement in June, and until October, 1898, Russian opposition, direct and indirect, the latter manifested especially by the intrigues of Mr. Pavloff in Peking, was evident. There was, first, Anglo-Russian conflict over the future status of Port Arthur and Talien in the Liaotung leased territory, the British favoring its opening on equal terms to all nations, the Russians being inclined to regard their newly acquired position under the March lease convention as very much their own affair.[11] British influence in North China railway administration, manifested by the service of Mr. Kinder as chief engineer on the line between Tientsin and Shanhaikwan, was resented by Russia. Mr. Pavloff at Peking for months sought to oust him from the post and replace him with a Russian engineer.[12] At the same time he pressed the Tsungli Yamen to give the contract for any railway extension which might be contemplated north of Shanhaikwan into Manchuria to the Russo-Chinese Bank.[13] There was, too, the matter of a foreign loan which the Chinese Gov-

way which China shall [may] herself build hereafter from Shanhaikwan in extension to a point as near as possible to this branch line, Russia agrees that she has nothing to do with it". (MacMurray, Vol. I, p. 127.) Kent, P. H. *Railway Enterprise in China*, pp. 53-54.

[11] The Russian Ambassador at the Court of St. James described the Russian idea of their rights in southern Manchuria as a "sphere of influence". (*China*, No. 1, 1898, p. 22. No. 59.)

[12] *Ibid.*, pp. 4, 13, 18, etc. Kent, P. H. *Railway Enterprise in China*, p. 51.

[13] *China*, No. 2, 1899, p. 1.

ernment at this time very much required. Russian opposition was effective in causing the Chinese Government to give up the idea of a British loan, since Russia had made threats to prevent it.[14] On their part, the Russian Government apparently had offered China a very liberal loan, " the *quid pro quo* asked for being that Russia should have the financing, construction, and control of all railways in Manchuria and North China, and that a Russian should be appointed Inspector-General of the Customs " when that post was vacated by Sir Robert Hart.[15] When, therefore, it appeared that the contract agreements in possession of the British and Chinese Corporation called for railway construction north of Shanhaikwan, with a loan to be floated in London, secured on the projected railways and their revenues, Russian opposition was particularly powerful. In midsummer of 1898, M. Pavloff even threatened the Tsungli Yamen that, in case they meant to go through with the British-financed project, Russia might be constrained to annex Ili or Kuldja in the far northwest of China.[16]

Russian opposition to the proposed British-financed railway extensions in southern Manchuria was directed, at the outset, especially to the line between Shanhaikwan and Newchwang. They insisted that, if the British were to be given the concession,

[14] *China,* No. 1, 1899, p. 33. *Vide: China,* No. 2, 1899, p. 1.
[15] *China,* No. 1, 1899, p. 9.
[16] London *Times,* July 8, 1898. *China,* No. 2, 1899, p. 2.

the line would have to be a purely Chinese line, and no mortgage upon it could be admitted.[17] When, however, it was revealed in early 1899 that the British and Chinese Corporation contract called also for the financing of a line between Shanhaikwan and Hsinmintun, the latter being a town some thirty miles from Mukden, Russian opposition was directed rather to that project.[18] The outcome of the combined issues was, as far as the railway projects themselves were concerned, that the British firm was allowed to go through with its program, but under conditions which show clearly the extent of the Russian opposition. Specifically, the British firm was prevented from placing a mortgage upon the Newchwang line: this was to remain "a Chinese line, under the control of the Chinese Government, and cannot be mortgaged or alienated to a non-Chinese Company".[19] As for the proposed extension be-

[17] *China*, No. 2, 1899, p. 37. Kent, *op. cit.*, p. 53.

[18] *China*, No. 2, 1899, p. 80.

[19] Anglo-Russian exchange of notes, April 28, 1899. MacMurray, Vol. I, pp. 204 ff. The exchange of notes, however, was not to be taken as of a character "to infringe in any way the rights acquired under the said [British and Chinese Corporation] Loan Contract", and a British engineer might be appointed by the Chinese Government. The loan contract of October, 1898, had provided that the loan of £2,300,000 was to be secured in part upon both the Hsinmintun and Newchwang extensions, the same to be a first charge upon the lines themselves and their earnings, and, in case of non-payment of the loan by the Chinese Government, the British firm was authorized to assume temporary control of the lines until payment was made. (MacMurray, Vol. I, p. 174.) "Russia had thus gained her point: there was to be no foreign-held mortgage on the Shanhaikwan-Newchwang Railway." (Kent, *op. cit.*, p. 54.)

tween Chunghouso—a point north of Shanhaikwan—and Hsinmintun, the Russian opposition succeeded in preventing any form of British "control" over it.

This final outcome of this issue of Anglo-Russian conflict of railway interests in southern Manchuria was attended by a larger issue affecting British interests in China. At an early stage of these negotiations (August, 1898), M. Lessar, the Russian *Chargé d'Affaires* at London, suggested to the British Foreign Office that "the difficulties of the situation might perhaps be met by an arrangement between Russia and Great Britain, by which the latter should be bound not to interest herself in railway or mining concessions in Manchuria, Russia on her part binding herself in a similar manner with regard to the much richer and more populous district of the Yangtze".[20] Count Muravieff continually stressed the desirability of such an arrangement, admitting to Sir C. Scott that, as to their respective interests in China, "Russia's was more political and confined to the north of Peking, and especially in Manchuria, for the protection of her Trans-Siberian outlet, while England's interest in China was chiefly commercial and more especially concerned with Central China and the basin of the Yangtze".[21] Muravieff presented a plan to Tsar Nicholas II for an understand-

Both the Newchwang and Hsinmintun extensions are now parts of the Peking-Mukden (Peiping-Liaoning) railway, a Chinese Government line.

[20] *China*, No. 2, 1899, p. 6.

[21] *Ibidem*, p. 11.

ing with Great Britain as to a mutual delimitation and guarantee of their respective spheres of interest in China, and, the Tsar having given his approval, negotiations to that end progressed without major interruption until the exchange of notes of April 28, 1899, brought the issue to a close. The agreement is brief, and deserves quotation in full, especially because it is the clearest evidence that Russia's sphere of interest in Manchuria was conceded in specific terms by at least one foreign power: [22]

"Great Britain and Russia, animated by a sincere desire to avoid in China all cause of conflict on questions where their interests meet, and taking into consideration the economic and geographical gravitation of certain parts of that Empire, have agreed as follows:

"1. Great Britain engages not to seek for her own account, or on behalf of British subjects or of others, any railway Concessions to the north of the Great Wall of China, and not to obstruct, directly or indirectly, application for railway Concessions in that region, supported by the Russian Government.

"2. Russia, on her part, engages not to seek for her own account, or on behalf of Russian subjects or of others, any railway Concessions in the basin of the Yangtze, and not to obstruct, directly or indirectly, applications for railway Concessions in that region supported by the British Government."

An appended paragraph paid belated tribute to the importance of observing the "sovereign rights of China". An "Additional Note" attached to the formal exchange of notes continued: "In order to

[22] Official text as transmitted to London by the British Ambassador at St. Petersburg, dated April 28, 1899. *China*, No. 2, 1899, p. 90. Also: MacMurray, Vol. I, p. 204.

complete the notes exchanged this day respecting the partition of spheres for Concessions for the construction and working of railways in China, it has been agreed to record in the present Additional Note the arrangement arrived at with regard to the line Shanhaikwan-Newchwang, for the construction of which a loan has been already contracted by the Chinese Government with the Shanghai-Hongkong Bank, acting on behalf of the British and Chinese Corporation."[23] This was the arrangement which gave evidence that the British Foreign Office was more concerned with safeguarding their interests in the Yangtze valley than in defending purely commercial claims of British nationals, under prior loan contract agreements, to railway projects in Manchuria.[24] The contract, as such, had been obtained in favor of the British firm, but its provisions made it quite unlikely that British investors would, in future, take any active part in developing new railways in

[23] *China,* No. 2, 1899, p. 90. MacMurray, Vol. I, p. 204.

[24] On November 23, 1898, Mr. Ewen Cameron, representing the Hongkong and Shanghai Banking Corporation, had written the British Foreign Office a letter in which he said, *inter alia,* that, having made inquiry of the Foreign Office in September, 1898, whether his firm might expect the assistance of the government in connection with the proposed final loan contract, he was now compelled to state that it would be difficult to go ahead "without some assurance that their security [referring to investors] will not be interfered with". He, therefore, bluntly requested the assistance of the Foreign Office against Russian opposition: "I am, therefore, reluctantly compelled to ask Her Majesty's Government to go the length of giving an assurance that our contract will be upheld, otherwise it will not be possible to carry out the transaction." (*China,* No. 2, 1899, p. 28.)

Manchuria. The British, after the exchange of notes of 1899, were, in fact, estopped from any railway finance beyond the point where the Shanhaikwan line branched off to Newchwang. The resulting situation, as far as British recognition of a Russian sphere of interest in Manchuria was concerned, was well appreciated by British nationals resident in China. The following quotation reflects the feelings of the British merchant community of the time: [25]

[25] Letter of the British China Association to Lord Salisbury, British Foreign Minister, April 15, 1898. *China*, No. 1, 1899, pp. 22-24. Three months later the same association addressed a letter (July 8, 1898) to the Foreign Office containing the following: "The Association is led . . . . to repeat the expression of its anxiety as to the steps that have been taken to give precision to China's promise that no portion of the Yangtze region should be leased or ceded to a foreign Power. Manchuria has been given up to Russia, and it is practically certain that no British interest would be admitted in the line which Russia is about to construct between Kirin and Talienwan. It would be consistent to expect that Russia should refrain from encroaching on the British sphere. It would be immeasurably preferable that important trunk lines should be made by China herself with foreign capital, because foreign capital is necessary, but foreign capital attracted, as it might be attracted, by provisions for foreign management under Imperial control and Imperial guarantee. Failing such methods, however, the Association ventures to suggest that Parliament might be invited to protect British interests by a British guarantee. The proposition is based, of course, on the assumption that England is interested in maintaining the Yangtze region intact, and that the control of its approaches is a matter of Imperial concern. It is based on the further assumption that the Russo-Chinese Bank is a Russian State bank, and that an enterprise executed by a State bank has a political aim. Commercial enterprise may be left to compete with commercial enterprise; private capital may be left to compete with private capital, but the operations of a great State bank cannot be rivalled by private finance either in regard to promptitude or daring." British commercial opinion evidently favored certain sacrifices in Manchuria in return for commercial gains and gov-

"The association feels no confidence that the door of Manchuria will be left open by the Great Power which has obtained possession of lock, bolt, and bar. An ice-free port was a necessary concession to its commercial needs. The fact that that port has taken the form of a fortress, which can be rendered practically impregnable, violently changes the situation. . . . . Equality of opportunity is already denied by the exclusion of English engineers and capital from participation in railway enterprise north of the Great Wall. . . . . We have seen a commencement of exclusion already in the north. . . . . Russia purposes certainly to monopolise the construction of Manchurian railways and the development of Manchurian mines."

Having obtained British official consent to withdrawal from the Manchurian field, the Russian Government proceeded to exact a promise from China that, henceforth, if railways were to be built in southern Manchuria, connecting Peking with the southern branch of the Chinese Eastern Railway, and, in case foreign capital were to be required for such projects, the Russian Government were first to be consulted whether they wished to offer loans for the purpose. This promise was in the form of a secret agreement, obtained by the Russian Minister, M. de Giers, June 1, 1899.[26] On this occasion the

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ernment support in the Yangtze valley. The interest of the British and Chinese Corporation, therefore, was considered distinctly secondary, and well worthy of being sacrificed. (*China*, No. 1, 1899, p. 139.)

[26] *U. S. For. Rels.*, 1910, p. 264. MacMurray, Vol. I, pp. 207-208. Cited by Willoughby, W. W. *Foreign Rights and Interests in China*, Vol. I, pp. 181-183.

Tsungli Yamen gave the Russian Minister the following promise:[27]

"*Your Excellency.* We discussed with Your Excellency a few days ago the subject of a railway connecting the Manchuria Railway with Peking, and explained the difficulty felt by the Chinese Government in acceding to the proposal. But we stated clearly that no other Government would be allowed to construct such a railway. We now wish to reiterate in the plainest terms that China agrees that if railways are in future built from Peking to the north or to the northeast toward the Russian border, China reserves the right to construct such roads with Chinese capital and under Chinese supervision, but if it is proposed to have such construction undertaken by any other nation, the proposal shall first be made to the Russian Government or to the Russian syndicate to construct the railway, and on no consideration will any other Government or syndicate of any other nationality be allowed to construct the railway. We ask Your Excellency to communicate this message to the Foreign Office of Your Excellency's Government."

Thus, by two bilateral agreements, the first with Great Britain, and the second with the Chinese Government, Russia obtained what must be interpreted to be an international legal recognition of her sphere of railway interest in Manchuria. It is, of course, to be understood that the first agreement was binding only as between Russia and Great Britain.

[27] *U. S. For. Rels.*, 1910, p. 264. The practical significance of this secret agreement became evident in 1909-1910 in connection with China's request for American capital to construct the Chinchow-Aigun railway, and Russia's protest on the basis of the existence of this agreement.

However this may be, its negotiation was so associated with bilateral negotiations between China and Russia that the outcome was practically participated in by China herself. It is rather to the secret Russo-Chinese agreement of June 1, 1899, however, that one must look for the legal foundation for Russia's claim to a sphere of interest in Manchuria.[28]

It is not to be concluded, however, that Great Britain was without support abroad in her policy of leaving Manchuria pretty much to Russia, as far as conceding her claim to a sphere of interest was concerned. Germany was equally willing to recognize the Russian sphere of interest in Manchuria. German trade interests in Manchuria were insig-

[28] This point deserves emphasis in a legal study, particularly as historians usually overlook it, and because it is quite evident that Russia's claim to a sphere of interest in Manchuria would have been far less substantial had there been no evidence of official agreement by the Chinese Government.

During the Boxer Rising the Russians assumed control of the entire Shanhaikwan-Hsinmintun-Yingkow railway, restoring the same to China in 1902. (MacMurray, Vol. I, p. 330.) The Evacuation Convention of April 8, 1902, specifically stated that the Shanhaikwan-Hsinmintun railway should be completed and operated "in strict accordance with the Agreement between Russia and England of the 16th April, 1899, and the Agreement with the private Corporation respecting the loan for the construction of the line," this, on condition, that the British and Chinese Corporation was not "to enter into possession of or in any way to administer the Shanhaikwan-Newchwang-Sinminting (Hsinmintun) line". The same article, however, provided that, in case extensions were to be built from this system in southern Manchuria, such a matter was to "form the subject of mutual discussion between the Russian and Chinese Governments". (MacMurray, Vol. I, p. 328.) Japan later relied on this clause to claim a right to veto the construction of the Hsinmintun-Fakumen railway in 1907-08.

nificant, while their financiers were concerned rather with Shantung. Consequently, when the Anglo-German agreement of October 16, 1900, was signed, it is noticeable that the two powers went no farther than to pledge themselves to the policy of maintaining equality of opportunity for trade " for all Chinese territory " with a qualification that this was only " as far as they can exercise influence ".[29] We now know that, attached to this public declaration of respect for the policy of " maintaining undiminished the territorial condition of the Chinese Empire " there was a distinct reservation on the part of the German Government, one which was perfectly understood at the time by the British Government, and, in fact, a part of the mutual declaration of policy. A recent British Foreign Office publication contains evidence that the British negotiator had admitted a German reservation excluding Manchuria, and that the phrase " as far as they can exercise influence " was inserted by the German negotiator for that very purpose.[30] Count von Bülow's explanation of the agreement to the Reichstag was not contested by Great Britain: " That agreement was in no sense concerned with Manchuria..... There were no German interests of importance in Manchuria, and the fate of that province was a matter of absolute indifference to Germany."[31] Thus, there was evidently a

[29] MacMurray, Vol. I, p. 263.

[30] *British Documents on the Origins of the Great War*, 1898-1914, Vol. II, pp. 26-28.

[31] *Ibid.*, pp. 26-28. The famous speech of Count von Bülow in the Reichstag on March 15, 1901, was reported in the London *Times*,

bilateral agreement between Great Britain and Germany posited on the existence of a Russian sphere of interest in Manchuria.

In addition to these bilateral agreements recognizing the existence of a form of sphere of interest for Russia in Manchuria, a third and more comprehensive recognition, because this time in a multilateral agreement, was obtained for the Russian sphere through the exchanges of notes initiated by John Hay, American Secretary of State, in the autumn of 1899. An enunciation of the official American statement of the so-called "open door" policy was contained in Mr. Hay's circular notes to the powers concerned, including Russia, despatched *mutatis mutandis* on September 6, 1899.[32] The note to Russia was similar to that sent to Great Britain, containing among other things, a reference to the "sphere of interest" which Russia was understood to possess in China, that is, in Manchuria. Russia was asked to adhere to a declaration to the effect that the Russian Government would not interfere with any treaty port or vested interest within any so-called "sphere of interest" or leased territory which Russia might

March 16, 1901, as follows: "The Anglo-German Agreement has no reference to Manchuria ['Here, hear', and sensation] . . . . I can now add that during the negotiations which led to the conclusion of this Agreement, we left no room for any doubt that we did not take it as applying to Manchuria . . . . As regards the future of Manchuria—really, gentlemen, I can imagine nothing we regard with more indifference. ['Hear, hear,' on the right]."

[32] *U. S. For. Rels.*, 1899, pp. 128-143. Cf. Moore's *International Law Digest*, Vol. V, pp. 534-549; MacMurray, Vol. I, pp. 221-234.

have in China;[33] that within such "sphere of interest" there would be no interference with the application of the uniform Chinese treaty tariffs; and that the Russian authorities would impose no higher harbor dues on vessels of other nationalities having business within the Russian "sphere", nor charge higher railroad freight rates on alien foreign goods in their "sphere" in Manchuria. These were specific declarations intended to give effect to a general agreement among the powers to insure equality of opportunity for trade in their respective spheres of interest, as applied to Russia, in Manchuria. The specific reference to the Russian sphere of interest obviously could apply nowhere but in Manchuria, and as this reference, thrice stated, was a condition of all the replies, it was technically a clear recognition of the existence of such a Russian sphere of interest in Manchuria.

The Hay notes were obviously sent in order to secure a general adherence to the policy of the "open door" in China. Russia replied, however, affirming that the Russian Government had "al-already demonstrated its firm intention to follow the policy of the "open door", but evading specific assurances on the very points designated by Mr. Hay. What concerns us here, however, is not the

[33] December 18/30, 1899, MacMurray, Vol. I, p. 234; *U. S. For. Rels.*, 1899, p. 141. For a discussion of the import of the various replies of the powers to Mr. Hay's first "Open Door" note of Sept. 6, 1899, and especially for the Russian reply, see the author's documentary analysis: *The International Relations of Manchuria*, pp. 35-43.

commitments of the powers with respect to the so-called " open door " policy, but rather their general acceptance of " spheres of interest " in China. The Russian sphere of interest in Manchuria was clearly recognized by the exchange of notes of 1899.

In passing, it should be noted that the Russians violated the policy of the " open door " in Manchuria as often as they re-asserted adherence to it, and adherence was declared in more international agreements than one before 1904. Russia, equally with other foreign powers, had committed herself to maintaining the territorial and administrative integrity of China and of non-interference with equality of opportunity for the commerce and industry of all nationals there, more specifically in agreements to which the American Government was not a party than in the Hay exchange of notes themselves.[34] Yet, to cite but one instance, the violation of the " open door " by illegal appropriation of the Chinese maritime customs revenues at Newchwang after 1898 showed how extremely difficult it was to reconcile spheres of interest, especially as applied by Russia, with equal opportunities for legitimate trade competition by other foreign nationals.[35]

[34] *Vide:* The Anglo-Russian exchange of notes of 1899, which bound Russia not " to infringe in any way the sovereign rights of China or existing treaties "; the Russian statement of October 15/28, 1900, to the effect that " the maintenance of the integrity of the Celestial Empire " was " the fundamental principle of its policy in China ". (MacMurray, Vol. I, p. 204; p. 264.)

[35] This subject of Russian violation of the " open door " in Manchuria prior to 1905 was discussed at some length in the author's

The war with Japan ended the Russian hegemony over the Kwantung leased territory and over the southern branch of the Chinese Eastern Railway below Changchun. Such of the Russian sphere of interest as remained after the treaty of Portsmouth (1905) was restricted to the area north of Changchun. While the Russian position has since been strong in so-called "North Manchuria", declining, to be sure, after the Russian Revolution in 1917, and impeded by lack of diplomatic relations with Peking until 1924, the Russian Government have never ceased to regard this part of China as of special concern in their Far Eastern policy. There exists, however, no adequate body of agreements with China to create for Russia, or for the Chinese Eastern Railway, any priority in building of new railways in northern Manchuria. What does exist, or rather what did exist from 1907 to 1916, is a series of open conventions and secret treaties between Russia and Japan in each of which the signatories undertook to recognize their spheres of railway interest in Manchuria. These treaties have long since

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article, "The Russian Advance into Manchuria", published in the following places: The *Trans-Pacific* (Tokyo), Sept. 19, 1925; The *China Weekly Review* (Shanghai), Aug. 8, 1925, pp. 185-190; The *Chinese Students' Monthly*, May, 1925, pp. 15-23. For specific original references to these instances of Russian violation of the "open door" see, for example, the following: Lord Beresford, *The Break-Up of China*, p. 37; *British Parliamentary Debates*, Fourth Series. July-August, 1903, No. 126, p. 176, and Feb., 1904, No. 129, p. 611; *U. S. For. Rels.*, 1903-1904, pp. 53-55; *U. S. Consular Reports*, April, 1904, No. 283, p. 2.

lapsed, however, and the negotiation of new agreements by the Soviet Russian Government, two with the Peking authorities in May, 1924, and one with the Mukden authorities in September, 1924, constitutes evidence that, as far as international legal commitments are concerned, the Soviet Government have given up any claim to a sphere of interest in Manchuria.[36] Whether, during the negotiations conducted by the late Viscount Goto in Moscow in December of 1927, the Japanese and Soviet governments came to some understanding as to their claims to spheres of interest or their respective "special rights and interests" in Manchuria, is not publicly known.

2. Russo-Japanese Agreements Delimiting Their Spheres: 1905-1916. Having endeavored to obtain from China a recognition of a sphere of interest for Japan in the areas gravitating toward the South Manchuria Railway, the Japanese Government, fol-

[36] The texts of the two Peking agreements of May 31, 1924, by which diplomatic relations between China and Soviet Russia were resumed, and a joint management agreement for the Chinese Eastern Railway was instituted, may be found in: The *American Journal of International Law,* Supplement, 1925, Vol. 19, pp. 53-56; the *Russian Review* (Washington, D. C.), Vol. III, No. 20 (Oct. 15, 1925), pp. 414-419; and *Carnegie Endowment Supplement, China Treaties and Agreements:* 1919-1929, pp. 133-144. The official text (originally in the English language) of the Mukden agreement of Sept. 20, 1924, with regard to the Chinese Eastern Railway, may be found in: Young, *The International Relations of Manchuria,* pp. 295-300. A translation of a French version, unofficial, of this same agreement may be found in the Carnegie Endowment for International Peace supplement, to Dr. MacMurray's treaty collection, pp. 148-152.

lowing the war with Russia, undertook to bring about a *rapprochement* with her recent enemy.[37] By so doing Japan sought to obtain a self-denying ordinance from Russia for the future, and to obtain Russian recognition of a Japanese sphere of interest in South Manchuria. The attempts of British and American financial interests to enter the Manchurian field with railway financing and construction contracts, notably the activity of the syndicate which proposed the construction with British capital of the Hsinmintun-Fakumen railway in 1907, and that of the Anglo-American interests in 1909-10 which projected the Chinchow-Aigun system for construction, served very directly to hasten the *rapprochement* between Russia and Japan, and to bring into being the first agreements between them which contained a definite recognition of their respective " special interests " and spheres of interest in Manchuria.

The war had been concluded by the treaty of Portsmouth, signed on September 5, 1905. Taken at its face value, aside from the transfer of the former Russian railway and mining rights in South Manchuria to the Japanese, this treaty contained little or no evidence that henceforth these two states would undertake to support each other's claims to spheres of interest in Manchuria. On the contrary, Russia specifically declared in Article 3 that the Russian

[37] *Vide:* Ch. III, for these Sino-Japanese negotiations of 1905. For an interesting account of Russia's dilemma in 1905-06, and the factors counselling an understanding with Japan, see: *Recollections of a Foreign Minister* (*Memoirs of Alexander Isvolsky*), Ch. II.

Government "have not in Manchuria any territorial advantages or preferential or exclusive concessions in impairment of Chinese sovereignty or inconsistent with the principle of equal opportunity ".[38] But it might be asked whether the Russian Government's declaration as to their own interpretation of those generalities—the sovereignty of China and the principle of equality of opportunity—had any legal significance. The declaration, if applied solely to northern Manchuria, had some meaning, since, as a matter of fact, the Russian Government had not had, before 1905, a legitimate claim to a sphere of interest there, at least in so far as China's consent was evident.

What is more important in the treaty of Portsmouth is the pledge in Article 4 as follows: "Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."[39] This was forward-looking. In the most specific terms it pledged the signatories to refrain from placing obstacles in the way of the normal and independent development of Manchurian railways by the Chinese Government, with or without foreign capital. The only justification, then, for either government departing from this bilateral agreement in future must be derivable from the claim, reasonable in law, that it was bind-

[38] MacMurray, Vol. I, p. 523.
[39] *Ibidem*, p. 523.

ing only between the two states, who were free to covenant at a later time to change their respective policies. But it must be remembered that, when China gave approval to these transfers in the treaty of Portsmouth, she did so with the implied condition that the treaty of Portsmouth was to remain in force and intact for the future. China, therefore, would have had a reasonable claim that alteration of the treaty of Portsmouth operated to release her from the full vigor of any pledge made to Japan in the Sino-Japanese treaty of Peking of December 22, 1905.[40] After 1907, however, Japan and Russia clearly departed from their declared policies, and, in the series of bilateral agreements which followed, undertook to guarantee, as between them, the sphere of railway interest of the other. China was not consulted, nor informed as to the true import of several of these agreements which were kept secret.

Of such agreements between Russia and Japan there were between 1907 and 1916 no less than seven, of which four were kept secret by mutual understandings, or revealed, it appears, in substance only to the British and French foreign offices. As the later agreements were, in the main, but developments from the initial open convention and secret treaty of July 30, 1907, at least in so far as they undertook to guarantee more or less clearly defined spheres of interest for Russia and Japan in Manchuria, these agreements of 1907 are basic. In general, it may be

[40] *Ibidem*, p. 549.

said that the Russian Government, as well as the Japanese, had their own diplomatic reasons for desiring to effect such a series of understandings with their former adversary in the war of 1904-1905.[41]

Following immediately upon the conclusion of a Franco-Japanese agreement of June 10, 1907, which was both an *entente cordiale* and a guarantee of the *status quo* in the Far East,[42] the Japanese Ambassador at St. Petersburg signed with the Russian Government, on July 17/30, an open convention and a secret treaty, the former constituting hardly more than a mutual agreement to respect the *status quo* in the Far East and an arrangement for consultation in case of occurrences threatening to disturb the *status quo*. The latter was the more important since it clearly undertook to define and to guarantee their respective spheres of interest in Manchuria.[43] Although the exact terms of this first Russo-Japanese secret treaty have never been published officially, the substantial accuracy of its contents has been established by subsequent publication of the secret treaties of 1910, 1912 and 1916 which refer to this initial

[41] *Vide:* Young, *The International Relations of Manchuria,* pp. 266 ff. Appendices C and D contain a critical analysis of these secret treaties, with a conclusion that they are authentic.

[42] MacMurray, Vol. I, p. 640.

[43] MacMurray, Vol. I, p. 657. An official English translation of the open Russo-Japanese convention of 1907, handed to the United States Department of States by the Japanese Embassy in Washington on Aug. 14, 1907, may be found in: *U. S. For. Rels.,* 1907, Pt. II, p. 765. This differs slightly in form, but is substantially identical in substance with the text printed in MacMurray. MacMurray's treaty collection contains no version of the secret treaty.

treaty. The secret treaty of 1907 evidently contained, *inter alia,* a mutual recognition of the spheres of interest of Japan and Russia in Manchuria, as well as a recognition of Japan's "special interests" in Korea. Their spheres of interest in Manchuria were delimited by a line which was drawn eastward from a point on the Nonni river south of Tsitsihar; then east from the bend in the Sungari through Petuna, Taolaichao on the Chinese Eastern Railway, through Chingpai lake to Hunchun and Possiet Bay. Changchun, the junction point of the southern section of the Chinese Eastern Railway and of the South Manchuria Railway, became a natural boundary point between these spheres.[44] Within their respec-

[44] "Japan promised not to seek railway or telegraph concessions north of a line approximate to the course of the River Nonni as it flowed east, and Russia, on the other hand, agreed to refrain from seeking railway or telegraph concessions south of that line." (Quoted from Dr. A. L. P. Dennis, *The Anglo-Japanese Alliance,* p. 28.) Dr. Dennis prepared this work as one of the information series for use of the American Delegation at the Washington Conference. It was to have been published subsequently by the Carnegie Endowment for International Peace, Washington, along with similar studies prepared in 1920-1921. Though printed, it was never publicly issued. Dr. Dennis, however, subsequently published essentially the same materials in 1923 at Berkeley, California, from which the above quotation is taken. In 1924 Dr. Dennis published the following similar interpretation of the secret Russo-Japanese agreement of 1907:

"The secret agreement of the same date, however, recognized first, the special interests of Japan in Korea in distinct fashion. Second, a line of demarcation across Manchuria was fixed north of which, in self-denying fashion, Japan agreed not to seek railway or telegraph concessions. Russia, on the other hand, agreed to refrain from seeking similar concessions south of that line which stretched eastward from the course of the river Nonni as that stream flowed southeast to join the Sungari River. Third, Russian interests in the Chinese

tive spheres of interest each state was to be assured of entire freedom of exploitation in such matters as railway financing and telegraph construction.

Just as the secret treaty of 1907 provided for the delimitation of areas for economic penetration of Chinese territory,[45] so the secret treaty of 1910 between Russia and Japan undertook to do the same thing by confirming the first secret treaty. The concealed agreement, like that of 1907, was attached to a public convention signed contemporaneously. Its authenticity is established beyond question, although the current texts are but copies of the draft agreements out of which the treaty eventuated. M. Isvolsky, who signed both agreements of July 4, 1910, is represented as having given the following description of its principal features in a strictly confidential letter to the Rusian Ambassador in London, dated June 11/24, 1910.[46]

"Negotiations have been taking place for some time past between St. Petersburg and Tokyo Cabinets in order precisely to establish and bring into conformity, their joint interests in Manchuria, so that peace in the Far East may be further secured. An experience of three years has proved the expedi-

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Eastern Railway were stated and in a vague fashion Japan recognized that Russia also had interests in Mongolia." (Dennis, A. L. P. *The Foreign Policies of Soviet Russia*, pp. 271-272.)

[45] Dennis, *The Foreign Policies of Soviet Russia*, p. 272.

[46] Siebert and Schreiner, *Entente Diplomacy and the World*, 1909-1914, pp. 16-17. Cf. Laloy, Emile, *Les Documents Secrets des Archives du Ministére des Affaires Etrangéres de Russia, publie par Les Bolcheviks*, p. 25.

ency of the Russo-Japanese Treaty of July 17/30, 1907, and the two Governments have now unanimously recognized that the above-mentioned aim can be best attained by a further development of this treaty. . . . . To-day both Cabinets have come to a perfect understanding and they are about to set their signatures to a public and a secret agreement. The first promotes closer joint action between Russia and Japan in the questions of Manchurian railways and confirms anew the firm resolution of both Governments to maintain the *status quo* in these districts. The Secret Treaty defines more precisely the two spheres of interest, as well as the limitations to which they subject themselves in order to reinforce their mutual relations and to preserve the positions proper to them in Manchuria from all interference on the part of other Powers. . . . . May I request you to bring the above to the knowledge of Sir Edward Grey and to inform him confidentially of both projects, whilst at the same time expressing the hope that he will regard these two diplomatic documents as a new guarantee of peace and quiet in the Far East." [47]

A complete understanding between Japan and Russia as to these points seems to have eventuated as early as February or March of 1910.[48] Isvolsky is known to have been very critical of American efforts

[47] The Russian Ambassador telegraphed to Isvolsky on June 15/28, 1910, that he had carried out the Foreign Minister's instruction and that Sir Edward Grey was "very much gratified" at being informed of the open and the secret agreements characterized by Isvolsky's instructions. (Siebert and Schreiner, pp. 16-17.) It appears that the French Government were similarly informed of these agreements, with the full knowledge of the Japanese Government. (*Ibid.*, p. 19.)

[48] The Russian Ambassador at Tokyo telegraphed Isvolsky on February 23/March 8, 1910, that Baron Komura shared Russia's views as to the desirability of an agreement guaranteeing the "*status quo* in Manchuria" and the "definite demarcation of the special Russian and Japanese interests and their protection against aggression on the part of a third Power". (Siebert and Schreiner, p. 19.)

to participate in financial assistance, especially for railway construction, in China and particularly in Manchuria. It was, in fact, during February that the Russian Minister at Peking protested strongly to the Chinese Government against the construction of the Chinchow-Aigun railway with Anglo-American capital.[49] At the same time the Japanese Government proposed that if the Chinchow-Aigun railway were to be constructed, it should be connected with the South Manchuria Railway.[50] The renewal of the 1907 agreements was, in fact, a very immediate outcome of the "Knox Plan" to neutralize the Manchurian railways, including both the South Manchuria Railway and the Chinese Eastern Railway, and the Anglo-American scheme to finance the construction of the Chinchow-Aigun system, which, like all other railways in Manchuria, under the "neutralization" scheme, were to belong to China, but to be operated under some form of an international railway board.

In the official text of the draft Russo-Japanese secret treaty of July 4, 1910, transmitted through

[49] Russian memorandum transmitted to Prince Ch'ing on Feb. 8, 1910. This contains the following paragraph: "In regard to all future railways in Manchuria which China may propose to build with foreign capital, the Russian Government must be first consulted, and must first consider if the plans have any consequence to the military and political interests of Russia, or to the Northern Manchurian Railways, thereafter determining what must be done to balance the influence of the arrangements made for the said railways." (Lawton, Lancelot. *Empires of the Far East,* Vol. II, p. 1354.) *Vide: U. S. For. Rels.,* 1910, pp. 240, 261, 264.

[50] Japanese Minister to the Wai Wu Pu, Feb. 14, 1910. (Lawton, Vol. II, p. 1355.)

the Russian Ambassador to the British Foreign Minister, the original secret treaty of 1907 was specifically confirmed, while five articles established a new basis for mutual recognition of either their "special interests" or of their respective "spheres of interest" in Manchuria.[51] The first article confirmed the "line of demarcation" of their respective "spheres of interest" in Manchuria, as drawn in the 1907 treaty; the second reaffirmed their agreement to recognize the independence of action of each within its own sphere; the third specifically obligated each to refrain from interfering with "the future development of the special interests of the other party within the boundary lines of such spheres of interest"; the fourth obligated each to observe the treaty rights of the other, each with respect to the other's "zone" in Manchuria, and to refrain from "all political action" within the "sphere of interest" of the other; while the fifth article provided that the treaty should be considered a consultative pact obligating them mutually to confer "in case these special interests should be threatened". Secrecy was enjoined, though the nature of this agreement was communicated to both the British and French governments with the consent of the signatories.[52]

[51] The draft text of the secret Russo-Japanese treaty of July 4, 1910, is printed in full in Siebert and Schreiner, *op. cit.*, p. 17. Also: Young, *The International Relations of Manchuria*, pp. 121-122.

[52] The cordial relations existing between the Russian and Japanese Governments at the time are shown by certain interesting acts of formal friendliness or of convivial assemblies of their nationals in

The secret Russo-Japanese treaty of 1912 was negotiated some time after M. Sazonoff had replaced M. Isvolsky as foreign minister. Sazonoff was equally eager to obtain an understanding with Japan as to Russian interests claimed in both Manchuria and Mongolia. The Chinese Revolution had unseated the dynasty, and while the question of according diplomatic recognition to the Republic and its government under Yuan Shih-k'ai confronted foreign offices, Sazonoff approached Japan for a new treaty particularly with reference to a delimitation of the "spheres of interest" of the two countries in "Outer Mongolia" and "Inner Mongolia".[53] In July of 1911 a delegation of Mongols had gone to St. Petersburg to request Russian assistance in the Mongol move for autonomy from China. When the Chi-

Harbin and Dairen. A Russo-Japanese society was formed in Dairen early in 1910 on the initiative of high officials of the South Manchuria Railway Company. In midsummer Prince Tokugawa, on the occasion of a reception for the Russian naval squadron at Port Arthur, replied to a toast with the following statement: "The Russians will eventually become as great friends of the Japanese as the Britishers have been." Tsar Nicholas II conferred the First Class Order of Anna upon Mr. Z. Nakamura, president of the South Manchuria Railway, and high orders upon the members of the Board of Directors and the Secretariat, Mr. K. Uyeda, private secretary to the president, receiving the Second Class Order of Stanislaus. (*Manchuria Daily News*, June 29, Aug. 12, Nov. 1, 1910.)

[53] Siebert and Schreiner, p. 39. Sazonoff to the Russian Ambassador at London, June 19/July 2, 1910: "The intention exists of signing a secret convention with Japan with regard to our spheres of interest in Inner Mongolia. In agreement with the Japanese Government we communicate the text of the projected document to the French and British representatives. The Japanese Government will send a similar note to Paris and London."

nese Revolution broke in the summer, the Mongols set up their own government at Urga, declared secession from the Chinese Republic and signed with Russia an agreement by which the latter promised to respect Mongolian autonomy from China.[54] These events, therefore, hastened the Russo-Japanese negotiations which resulted in the secret treaty. By this agreement of June 25, 1912, the commitments of the secret treaties of 1907 and 1910 were confirmed, and while Japan recognized the " special interests " of Russia in Outer Mongolia, Russia reciprocally recognized the " special interests " of Japan in " Inner Mongolia ".[55] The Japanese sphere of interest in Inner Mongolia was apparently to be confined to that portion lying to the east of a meridial line from Peking, including, that is, most of Jehol district and the eastern portion of Chahar.[56]

[54] *China Year Book*, 1921-1922, pp. 571-591.

[55] Siebert and Schreiner, pp. 39-40. Cf. Dennis, A. L. P. *The Foreign Policies of Soviet Russia*, p. 272.

[56] These were then, under the Chinese administrative system, termed "special administrative districts", were referred to non-officially by Chinese as included within "Inner Mongolia", but are now provinces. Jehol province is now included under the official nomenclature of the Nanking National Government as one of the four provinces termed "The Northeastern Four Provinces", commonly referred to as "Manchuria".

At that time, however, the term "Inner Mongolia" had ceased, according to official Chinese usage, to have any application to the territory which had been formerly a part of Inner Mongolia, but which had been incorporated under the administration of the Manchurian provinces. Mr. Kurachi, Vice-Minister for Foreign Affairs in Japan, is reported to have declared on July 19, 1912, that, in the Japanese use of the term, "by Inner Mongolia is meant that portion

As far as the Russian recognition of the Japanese sphere of interest was concerned therefore, Japan was understood to possess within her sphere not only all of Manchuria south of the junction of the Nonni with the Sungari and south of Changchun, but extending west into the Mongolian plateau.

The fourth secret treaty between Russia and Japan, negotiated along with an open convention in the summer of 1916, was a product of a combination of circumstances intimately connected with the previous alignments of the signatories and their attitude and rôle in the Great War. It followed one year after Japan had submitted the notorious "Twenty-one Demands" to China. The issue of the war was uncertain; Germany had made offers of a separate peace with Japan in May, 1916; and Sazonoff, apprehensive that the German offer might receive favorable consideration in Tokyo, was eager to prevent it.[57] The outcome of this situation was the Russo-Japanese convention of July 3, 1916,* and

of Manchuria formerly known as Inner Mongolia". (Pooley, A. M. *Japan's Foreign Policies,* p. 77.) Professor Pooley explained this statement by saying that, while in 1912 "only the Manchurian portion was included in the Japanese sphere", between 1913 and 1915, the Japanese Government came to include also within the meaning of the term "Inner Mongolia" that portion which had been included within Chihli province by the Chinese Government.

[57] Dennis, *op. cit.,* p. 273. Cf. Testimony of Thomas F. F. Millard before the Senate hearings on the Treaty of Peace with Germany, in which Mr. Millard replied to Senator Johnson (Cal.) that, in his opinion, this treaty was directed against the United States. (*Treaty of Peace with Germany,* Hearings; Senate Committee on For. Rels.; 66th Cong., 1st Sess., Pt. 9, p. 458.

* June 20, western calendar.

a secret treaty of the same date. The former was of a political character, and was tantamount to a treaty of alliance, defensive in terms, but capable of broader interpretation. In case "the territorial rights or the special interests" in the Far East of either party were threatened by any outside power, or combination of powers, the one would come to the other's assistance.[58] This added nothing, however, but a confirmation to the previous commitments of Russia and Japan to respect their spheres of interest in Manchuria, except, perhaps, the language of an alliance.

The secret treaty, because more specific, has greater bearing on an attempt to define the meaning of "spheres of interest" in Manchuria. Here the term "vital interests" appears, those of each being recognized by the other. Any situation which would prejudice these "vital interests" of one party, obligated the other to come to her assistance, and to do so, if war resulted, by a declaration of war and a prosecution of hostilities until peace.[59] There was no new necessity for defining their respective "spheres of interest" in Manchuria, for that had

[58] MacMurray, Vol. II, p. 1327.

[59] The text of the Russo-Japanese secret treaty of alliance of 1916 was first published in *Izvestia* in 1917. The same was published by the Revolutionary Government in the *Gazette* of the Provincial Workmen's Peasant's Government, Dec. 21, 1917. The first English version seems to have appeared in the *Manchester Guardian*, Feb. 1, 1918, a translation of the *Izvestia* text. The New York *Evening Post* published a similar version on March 2, 1918. This may be found in: MacMurray, Vol. II, p. 1328.

been done quite clearly as early as 1907. But, combined with the former treaties which it confirmed, the injection of this political alliance into the Manchurian situation came on the very verge of transforming their economic " spheres of interest " into zones of political influence. What form that may have taken had the outcome of the war been otherwise, and had it been possible for the old régime to maintain itself in Russia, is an interesting speculation beyond the purposes of this study. The Russian Revolution resulted in the denunciation of this treaty along with its predecessors. When diplomatic relations were resumed between Japan and Russia, become Soviet Russia, the treaty of 1925 failed to reaffirm the old treaties delimiting their respective spheres of interest in Manchuria, and, in any event, that of 1916 was to have lapsed in 1921.[60]

The period of specific mutual recognition of the spheres of interest and the " special rights " or interests of Japan and Russia in Manchuria extended just a decade from 1907. The October Revolution established the Bolsheviks in authority in Petrograd and the years of unsettlement in the Russian Far

[60] It is interesting to note that this Russo-Japanese secret treaty of virtual alliance was to continue in force from signature until July 1/14, 1921, i. e., until one day after the termination of the Anglo-Japanese convention of alliance of 1911. The latter was subject to continuation in the absence of specific notification to terminate, given one year before the date for normal expiration. So also was the secret Russo-Japanese treaty of alliance of 1916 to continue under identical circumstances. Both were, therefore, terminated as a result of the Four-Power Pact of the Washington Conference.

East which followed, leading to inter-allied intervention in Siberia and North Manchuria, put all official relations between Japan and Russia in a parlous state until 1923. The late Viscount Goto, who was then mayor of Tokyo, carried on so-called "unofficial" negotiations with Mr. Joffe, the Soviet envoy to China and Japan, in that year and paved the way for recognition of the Soviet Government which followed in 1925. Diplomatic relations were restored by the treaty of January 20, 1925.[61] This agreement did not confirm the Tsarist treaties, but provided for their re-examination in a subsequent conference. Nothing was said of Manchuria, and if an understanding exists between the Soviet Government and the Japanese at present as to their claim in Manchuria it is, at least, not publicly known.

The Soviet Government obtained recognition from China in 1924, and in the agreements of Peking of May of that year, and that of Mukden in September, emphatically denounced the former Tsarist "unequal treaties" and provided for a new joint and coöperative administration of the Chinese Eastern Railway.[62] Soviet Russia has officially renounced any claim to a sphere of interest or to special interests of any kind in Manchuria, except in so far as they can be deduced from her vested interest in the Chinese Eastern Railway. Japan, on the other

[61] *American Journal of International Law,* Supplement, Vol. 19 (1925), pp. 78-88.

[62] Young, *The International Relations of Manchuria,* Appendix G.

hand, has made no recent claim to a sphere of interest in Manchuria, preferring to reserve the right to take any steps believed to be appropriate to safeguard her investments, the life and property of her subjects, and even to intervene to preserve "peace and order" in Manchuria.[63]

[63] *The Goto Mission to Moscow:* 1927. It has been widely rumored that some form of understanding between Soviet Russia and Japan, pertaining to their respective railway interests in Manchuria, was the outcome of the so-called Goto Mission to Moscow in December of 1927. There is, however, no evidence of a public nature which would serve to establish that a new mutual recognition of the spheres of railway interest in Manchuria has been perfected. A verbal understanding may exist, or more likely a mutual understanding not crystallized into any agreement, but, so far as is publicly known, the mission of the late Viscount Goto to Moscow had for its principal object the negotiation of a new fisheries convention bearing on Japanese rights off Kamchatka.

Mr. F. Kuhara went as "economic commissioner" to Moscow and, after ten days there, when he had conversations with Stalin and Chicherin, returned to Tokyo. Immediately upon his return he was received by the Throne at Akasaka palace. Viscount Goto proceeded to Moscow in time to have conversations with Mr. Kuhara on the latter's return, their meeting taking place at Verkni Udinsk near Lake Baikal on December 17th. Mr. Kuhara was represented in Manchuria at that time as having asserted that those with whom he had conversations in Moscow, meaning Stalin particularly, "advocated an entente with Japan". (*Manchuria Daily News,* Dec. 19, 1928.)

Upon Viscount Goto's return he denied that any secret agreement pertaining to the interests of Soviet Russia and Japan in Manchuria had been signed, although he repeatedly asserted that "an understanding between the two countries has been established" on questions broader than the fisheries question alone. (*Osaka Mainichi,* Feb. 8, 1928.) The *Osaka Mainichi* editorially expressed the view upon Viscount Goto's return to Tokyo that just as Japan had a "paramount interest in Manchuria and Mongolia" so also did Soviet Russia have "equally well-founded rights for economic activities in the Far East". This journal declared it "high time that the three nations [including China] most vitally interested in the territory

should endeavor to find some basis on which their respective rights and aspirations will be made reciprocally beneficial instead of being conflicting". (*Ibid.*, Feb. 10.)

Viscount Goto was represented as having stated to the *United Press* correspondent in Harbin, on his return from Moscow, that a "tentative scheme for Russo-Japanese coöperation in certain phases of economic development in Manchuria" had been arranged in Moscow by his mission. (*Peking Leader*, Feb. 2, 1928.) In the light of subsequent events, the despatch of new Soviet representatives to Tokyo, their continuation of the negotiations initiated in Moscow, and the protracted discussions of specific economic questions pertaining to Japanese concession rights in the Russian Far East, it would seem that no definite agreement, pertaining to close coöperation in Manchuria, had been negotiated and signed in Moscow.

CHAPTER III

Japan's Claims to Monopolistic Railway Rights

1. The Original Legal Basis of Japan's Claims. Before the Russo-Japanese war Japan not only did not have occasion to make claims to a sphere of interest in any part of Manchuria, but actually was more critical of Russia's attempts to isolate Manchuria from China, and to establish a general monopoly of railway and other commercial rights there, than was any other foreign state. Lord Beresford in 1897-98 found among Japanese officials, as among their commercial men, a unanimous desire to have an "open door" policy followed in China, and particularly in Manchuria where Japanese trade had begun to assume large proportions.[1] Japan even refused to accept the principle that Japanese nationals were subject to trial in the lessee's courts in

[1] Lord Beresford, *The Break-Up of China,* pp. 419-432. "My visit to Japan impressed me that the political as well as the commercial classes are determined to maintain an 'Open Door' in China, in those places where they have at present large commercial interests." From high officials, whom he named, Lord Beresford elicited the following opinion: "The Sphere of Influence policy in China would be considered fatal to the trading interest of Japan. On asking why, it was pointed out to me that Japan had a large and increasing trade with Corea and Newchwang, and hoped shortly to develop a large trade at Foochow and Hankow; that if the Open Door principle prevailed Japan intended to push her mercantile enterprises in other parts of China. Opinions were often given that the integrity of China must be preserved if the principle of the 'Open Door' was to obtain."

the leased territory of Kwantung, a principle which she herself defended when once Japan acquired the same lease after 1905. No government responded more unequivocally to the initial Hay "open door" note of 1899 than did the Japanese, their reply, dated December 26, 1899, without condition stating that Japan "adheres willingly" to the Hay declaration.[2] As long as the Russians were in control of the Kwantung leased territory and the whole of the Chinese Eastern Railway, and acted as they did during the Boxer Rising to prejudice all fair competition of other foreign nationals in Manchuria, the Japanese naturally strongly opposed conceding to Russia a sphere of interest of a nature to exclude their legitimate competition.

By the treaty of Portsmouth, as we have noted, Japan fell heir to all such Russian rights in South Manchuria as could be clearly traced to agreements in which China was a party. Not only the Kwantung leased territory and the southern section of the Chinese Eastern Railway below Changchun (more accurately, Kwanchengtzu), with attached mining rights, but also such prior rights to finance the construction of railways in southern Manchuria as had been conceded to Russia by China, were legitimately acquired by Japan.[3] These transfers were specifically ratified by the Chinese Government in the Komura-Yuan agreements of December 22, 1905.[4]

[2] MacMurray, Vol. I. p. 230; *U. S. For. Rels.*, 1899, p. 139.
[3] MacMurray, Vol. I, p. 522.
[4] *Ibidem*, p. 549.

The mere transfer of these rights to Japan at Portsmouth, however, was not in itself sufficient to give Japan a generally recognized monopolistic sphere of interest in southern Manchuria. There was no blanket right acquired by Japan, for example, to permit her financiers or her state banks to finance the construction of all railways in southern Manchuria which China might wish to have constructed with foreign capital. Technically, the British and Chinese Corporation, for example, would have been within its rights if it had sought to apply the reservation, contained in the Anglo-Russian exchange of notes of 1899 with respect to their spheres of interest in China. In the absence, however, of any article in the Portsmouth treaty binding Russia and Japan to respect in future China's right to develop Manchuria with such means, whether with foreign capital or otherwise, as she saw fit, Japan might have been justified, technically, in recalling two quasi-monopolistic rights granted the Russians before 1904, and applying them in her favor. These two commitments of China were, first, that contained in the agreement of May 7, 1898, with Russia to the effect that " railway privileges in districts traversed by this branch line [the southern branch of the Chinese Eastern] shall not be given to the subjects of other Powers ",[5] and, second, that contained in the pledge of the Tsung-li Yamen to the Russian Minister at Peking on June 1, 1899, to the effect that, if China

[5] MacMurray, Vol. I, p. 127; Kent, *op. cit.*, pp. 53-54.

required foreign capital for railway construction north and northeast of Peking, application would first be made to the Russian Government or their financiers.[6]

The fact is, however, that the treaty of Portsmouth contained such an article which, if it had any meaning at all, must be interpreted as a most definite renunciation, on the part of Japan, of any rights, derived from previous Russian rights, posited on the grants contained in these two agreements between Russia and China. This was Article 4, which reads as follows: "Japan and Russia reciprocally engage not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria."[7]

The Chinese Government were within their rights in presuming that this article constituted a denunciation and abrogation of such preferential and monopolistic claims to railway finance in southern Manchuria as Russia, and after 1905 Japan, might have assumed from the two Russo-Chinese agreements just referred to. This is particularly true since Article 4 of the treaty of Portsmouth, as all of the other articles, was, in fact, one of the conditions under which China agreed, in the treaty of December 22, 1905, with Japan, to sanction the transfer of the southern branch of the Chinese Eastern to Japan.

[6] *U. S. For. Rels.*, 1910, p. 264.

[7] MacMurray, Vol. I, p. 523. Cf. Willoughby, *Foreign Rights and Interests in China*, Vol. I, pp. 181-182.

Finally, it is obvious that the Japanese Government had previously committed themselves unequivocally to the pledges contained in their reply to the Hay correspondence of 1899 with respect to the "open door" policy. To assume, then, that Japan, by virtue of the treaty of Portsmouth with Russia, acquired a legitimate claim to a sphere of interest in southern Manchuria is unjustifiable.

On the date of the signing of the treaty of Portsmouth, moreover, it is apparent, since Japan had had no prior financial activity, outside of ordinary trade, in Manchuria, that Japanese financiers did not possess a body of preëmptive concession contracts, whether for railways or mines or otherwise, of a character to give them prior rights to be consulted in questions of financing such enterprises for the Chinese in Manchuria. It may also be noted, in passing, that the Anglo-Japanese treaties of alliance of January 30, 1902, and of August 12, 1905, did not contain clauses specifically referring to Manchuria, and, hence, no agreement with Great Britain tantamount to conceding any exclusive sphere of interest for Japan in Manchuria.[8]

To acquire a recognition of a sphere of interest in southern Manchuria, Japan would have had to seek a more or less definite agreement from China giving Japanese interests the right to veto the importation of non-Japanese foreign capital for railway construction or mining development in southern Man-

[8] MacMurray, Vol. I, p. 324; p. 516.

churia. The alternative, less satisfactory in law, but utilitarian in policy, was an understanding with Russia as to their respective interests in Manchuria.[9] Broader recognition of the international circle that Japan possessed a sphere of interest in Manchuria would also have served to give Japan an equal or stronger international position than Russia had had previously. Of these alternatives, only the second, a series of agreements with Russia, was clearly achieved by the Japanese Government in subsequent years, although year by year the Chinese Government granted a large number of railway contracts and mining concessions to the Japanese government banks or the South Manchuria Railway Company, until the total of such concessions clearly placed Japan in a position in South Manchuria where she possessed *in fact* a preponderant position in financial matters.

Such recognition as Japan received from the international circle generally for her claims to a " special position " in Manchuria, whether referred to as " special interests ", " vital interests " or otherwise, was always qualified, particularly by the reiterated commitments to the so-called " open door " policy, and generally by diplomatic language of other foreign states designed to avoid recognizing that Japan possessed an exclusive sphere of interest in

[9] This subject was treated in Chapter II, Section 2, and will be developed in its practical application in the ensuing sections of this chapter.

any part of Manchuria. The entire period, therefore, from Portsmouth to the Washington Conference, was one in which the Japanese Government asserted claims to special rights, economic or political or both, in southern Manchuria and eastern Inner Mongolia. Anticipating the position of Japan in Manchuria after 1925, it may be said that her claims to what was tantamount to a sphere of interest there have been dropped officially, while a new claim of a right of intervention to keep the " peace and order " in Manchuria has been asserted and acted upon, as in the summer of 1928.

Immediately after the signing of the treaty of Portsmouth with Russia, Japan took steps to obtain a more adequate recognition for her newly acquired interests in South Manchuria. When Baron Komura returned from Portsmouth, therefore, he proceeded almost directly to Peking to secure China's consent to the transfers of the leased territory and of the southern section of the Chinese Eastern Railway to Japan. After protracted negotiations with Yuan Shih-k'ai, the chief Chinese delegate, the negotiators signed a treaty in three articles (December 22, 1905) which included China's consent to the transfers made at Portsmouth, the condition being that Japan would be bound in future to observe all stipulations pertaining to the former Russian rights as established by the original Sino-Russian agreements.[10] A so-called " Additional Agreement " was attached to

[10] MacMurray, Vol. I, p. 549.

the treaty, which, *inter alia,* gave Japan the following added commercial privileges in southern Manchuria: China's consent to the opening of sixteen new towns to international trade; the right to "maintain and work" the military railway constructed between Antung and Mukden during the Russo-Japanese war and to improve it for commercial transport, the right to manage the same extending to a period of fifteen years from the date "of the completion of the improvements" necessary. A joint Sino-Japanese company was to be given the exclusive right to exploit timber resources in designated areas in the Yalu valley.[11] These were new commercial privileges for the Japanese in southern Manchuria, important in themselves, but lacking a general grant, exclusive in its effect on foreign capital interests, to prevent the financing, for example, of new railway lines with other than Japanese capital. Baron Komura had sought to obtain from Yuan Shih-k'ai during the Peking negotiations in December of 1905 just such a blanket and exclusive grant from the Chinese Government.

From the day of the signing of the Sino-Japanese treaty of Peking in 1905, even until now, it has been widely alleged that attached to the two agreements just characterized there were additional "secret protocols" wherein the Chinese signatories conceded the substance of the following article:[12]

[11] *Ibidem,* p. 553.

[12] Quoted from an *alleged text* of the same in MacMurray, Vol. I, p. 554.

"The Chinese Government engage, for the purpose of protecting the interests of the South Manchuria Railway, not to construct, prior to the recovery by them of said railway, any main line in the neighborhood of and parallel to that railway, or any branch line which might be prejudicial to the interest of the above-mentioned railway."

So frequent has been the acceptance of this *alleged* article, both in eastern Asia and in Europe and the United States, so important its bearing upon some of the most vital questions which concern southern Manchuria as a field for investment of foreign capital in railway enterprises for the Chinese Government, so numerous the occasions when the Japanese Government have referred to some such understanding with China in an effort to prevent outside foreign capital from participating in the construction of railways for the Chinese Government, and so vital the possible bearing of such a treaty stipulation upon the question of the "open door" for finance in Manchuria, that it would seem to be but reasonable that an officially accepted text of these alleged "secret protocols" could be referred to. Such is not the case, however. No such text *in full* has ever been published officially by either the Japanese or Chinese Government in any of their treaty collections, state papers or official communications to foreign states. Such a document has never been filed either with the League of Nations Secretariat or, apparently, with the State Department of the United States in conformity with the eleventh resolution of the Washington Conference dealing with Far Eastern affairs.

The fact is, however, that the only legal basis on which Japan could rest a claim for an exclusive sphere of railway interest in South Manchuria, during the period immediately following the signing of the treaty of Portsmouth, was these alleged " secret protocols " of December 22, 1905. It is important then to scrutinize such historical facts as are now available which tend to furnish evidence as to their existence, their character, if their actual existence be established, and their legal significance *vis-à-vis* Manchurian railway finance.

At the outset, it is evident that, when the ratifications of the Sino-Japanese treaty and additional agreement of December 22, 1905, were exchanged (January 23, 1906), no additional " protocols " or other commitments were at the same time included in the instrument of ratification.[13] Nor is there evidence of subsequent formal ratification of such " protocols ". It is conspicuous that, where the treaty and additional agreement of 1905 appear in the official Japanese Foreign Office treaty collection, there is no version, either in French, Japanese or Chinese, or any other language, of such " protocols ".[14] There appears to be no subsequent official

[13] MacMurray, Vol. I, p. 550. This source, on page 554, adds a note simply stating that " it has been stated that, to the treaty and additional agreement here printed, were attached certain secret protocols, of which the following summary has been given . . . . ". No source reference for this statement is given, however, for reasons which will later be alluded to.

[14] Ministère des affaires étrangères, *Recueil des traités et conventions conclus entre l'empire du Japan et les puissances étrangères.*

Japanese version of a *full text*, approved by China, in published form.[15]

We are confronted, then, with versions of certain "alleged secret protocols" which do not have the stamp of formal approval of the Chinese and Japanese Governments. These are the ones which invariably have been utilized by scholars writing to the point.[16] The source of these versions, as also of that contained in Dr. MacMurray's indispensable treaty collection, would seem to have been an alleged text to be found in a United States Government publication which, though printed, was not freely circulated.[17] There is no version, even of an alleged text,

(2 tomes, Imprimerie Impériale, Tokyo, 1918). One of these volumes is in Japanese, the other in foreign languages, especially French, as the French language was generally used by the Japanese Government for the definitive text for purposes of deciding conflicting interpretations. Chinese and Japanese texts of the treaty and additional agreement of December 22 are given on pages 281 to 288 of the Japanese volume. No other "protocols" or "minutes of conferences", etc., are attached.

[15] It is noticeable that Japanese scholars, whether writing in English or Japanese, fail to refer to a definite official publication for such a text. In Tokyo and other Japanese libraries I have failed to find justification for the following statement: "The protocol is included in the diplomatic documents of Japan and other powers, accessible to all students of international relations." (Kawakami, K. K. *American-Japanese Relations*, p. 34.) Nor is there such a copy in "the admirable libraries" for which the United States is here credited. The fact is that more than one Japanese scholar of distinction has failed to obtain a release of such a document from the Gaimusho.

[16] Cf. Clyde, P. H. *International Rivalries in Manchuria*, pp. 104 ff. Hishida, S. G. *Report on Progress in Manchuria: 1907-1928*, pp. 199-201. The latter gives an alleged text without any note of authority for it. Kawakami, K. K. *American-Japanese Relations*, p. 34.

[17] Rockhill, W. W. *Treaties, Conventions, Agreements, etc., relating to China and Korea*, October, 1904—January, 1908, pp. 137-140.

in the *Foreign Relations of the United States,* nor in the British Foreign Office publications. Consequently, in the absence also of any official Chinese text in published form, a strong presumption would appear at the outset against the existence of any such so-called " secret protocols " upon which the Japanese Government subsequently, especially in 1907, and as recently as 1931, have laid claim to a right to oppose certain railway construction in southern Manchuria.

On the other hand, there is considerable evidence that, during the Peking conferences between Baron Komura and Yuan Shih-k'ai in December of 1905, this very question of obtaining China's consent to a provision whereby Japan might veto the construction of railways alleged to be " parallel " to the South Manchuria Railway was discussed. The Japanese Government in 1906 evidently informed the British and American representatives at Tokyo that certain " protocols " were also signed at this conference in addition to the open treaty and agreement of December 22. On January 12, 1906, Mr. Huntington Wilson, the American *Chargé d'Affaires,* transmitted to the Department of State a communication to the effect that on January 11 he had been informed by Mr. T. Kato, the Japanese Foreign Minister, that none of the documents signed on December 22 was

Washington, 1908. In fact, it appears that this volume was not publicly issued because data, contained therein, with respect to these alleged " protocols " were considered to be questionable.

to have been published until after the formal exchange of ratifications, "but that since much of their contents had in some way become known, it had been decided to give them out informally". No copy of any "protocols" was at that time given to *Chargé* Wilson, although, in his dispatch to Washington, he gave evidence that the foreign minister had mentioned some such commitments to him:[18]

"Certain protocols, containing further arrangements of no small importance, were drawn up in conjunction with the treaty and agreement; but, as I was informed at the foreign office, these protocols are being kept secret for the present in accordance with an understanding with China."

Mr. Kato evidently referred to the dispatch sent by the Peking correspondent of the *Asahi* to Japan in which was included a telegraphic summary of certain "protocols".[19] Commenting on this press dispatch, the late Mr. Robert Young, editor and publisher of the leading English newspaper in Japan, wrote on January 18, 1906:[20]

[18] *U. S. For. Rels.*, 1906, Pt. II, p. 996. It is not clear whether Japan or China made the suggestion for secrecy. Mr. Wilson also drew attention to the fact that the treaty and agreement of December 22 had been drawn only in Japanese and Chinese, and commented that "this is interesting as a departure from Japan's former practice in making treaties to have the governing text in a western language, rather than one in the relatively ambiguous Japanese or Chinese".

[19] *The Japan Chronicle*, January 18, 1906.

[20] *The Japan Chronicle*, January 18, 1906. A direct quotation of Mr. Robert Young's editorial appears, without credit, in one of the volumes published by the late Bertram Lennox-Simpson (Putnam Weale): *The Truce in the East and Its Aftermath*, pp. 484-485. Each reference gives a version of alleged "secret protocols".

"There has been a widespread belief that in addition to the clauses of the recently published treaty between Japan and China, there existed a secret agreement between the two Powers. It was, indeed, reported that Baron Komura, addressing his countrymen at a reception given in his honour at Tientsin, had made a statement to the effect that there was a secret agreement. . . . . It now transpires that the "secret agreement" consists of about a half a dozen chapters of records of the proceedings at Peking between Baron Komura and the Chinese Plenipotentiaries, containing various agreements between the two Governments. These records, it is stated, will not be published, but the *Asahi* correspondent indicates their purport."

There is, moreover, evidence that on February 16, 1906, the American *Chargé* at Tokyo communicated to the Department of State a *summary*—not a verbatim text—of these "protocols" or "minutes" of conferences which he had obtained in confidence from the Japanese Foreign Office.[21] It is this *summary of alleged secret protocols* which is printed in Dr. MacMurray's volume. Emphasis has been placed upon the adjectival modifiers here because such a text is quite different for purposes of legal interpretation from a verbatim text published officially with the approval of both the Chinese and Japanese governments, and certified as authentic in detail.

[21] Cf. Willoughby, W. W. *op. cit.*, Vol. I, pp. 171-172. Dr. Willoughby's citation here is from "Rockhill", p. 140—which, in fact, is the printed, but not publicly circulated, volume referred to above. On this occasion the Japanese Minister for Foreign Affairs had informed Mr. Wilson that there was nothing in the protocols which the Japanese Government were not willing that the world should know, but that they had been kept secret at the special request of the Chinese Government.

It is evident, also, that the Japanese Government communicated a copy of at least the most important clause, that referring to the right to veto the construction of " parallel " railways, to the British Foreign Office in April, 1906. Replying to a question in the Commons, Sir Edward Grey, on March 3, 1908, at a time when British public opinion was critical of the British official indifference to the issue of their commercial rights in Manchuria, made the declaration that Japanese opposition to the Hsinmintun-Fakumen railway project was based on the existence of " an agreement of 1905 with China ". " The existence of this agreement ", said Sir Edward Grey, " is not disputed by the Chinese Government." [22] Later, on March 24, he was asked in the Commons if the British Government possessed a " copy of the alleged agreements by which Japan claims the right of vetoing the construction of the Hsinmintun-Fakumen railway ", whether it was received simultaneously with the treaty of 1905, and if not, whether it bore the signature of the plenipotentiaries, and if it did not, if it had any validity.[23] The Foreign Secretary replied that the foreign office had received a " text of the clause of the protocol " in question, under date of April, 1906, that they were " informed " that the protocol bore the signature of the Chinese representatives, and that, therefore,

[22] British *Parliamentary Debates*, 4th Series, No. 185, March 3, 1908, p. 527.

[23] *Ibidem*, No. 186, March 24, 1908, p. 1191.

" there can be no doubt as to its validity ".[24] It does not appear, however, that Sir Edward Grey produced a copy of the entire text of the protocols, or even admitted possession of the same. Nor did he give evidence that the Chinese Government had approved of the particular version of the article reputed to have been quoted from the " protocols " of 1905.

Dr. Morrison, the able *Times* correspondent in China, in a dispatch from Peking, dated September 28, 1908, was careful not to affirm or to deny " the validity of the protocol to the Treaty of 1905 ".[25] Evidently, there was some question about the text which had been circulated to the foreign offices. As a matter of fact, it appears that Governor T'ang Shao-yi at Mukden, in a conversation of January 28, 1908, presumably reported by American Consul-General Willard Straight, actually denied that there existed, in the Peking agreements, any clause debarring China from paralleling the South Manchuria Railway. He is reported to have stated that there was no " secret agreement " between China and Japan at that time and bearing on this point, and that, although the Japanese delegates had requested such, nothing of the sort was actually agreed upon. There were only " signed minutes of the conference ", which, as a matter of fact, contained all of these discussions, and nothing tantamount to any

[24] *Ibidem*, p. 1192.
[25] Cited also by Lawton, *op. cit.*, Vol. II, p. 1230.

commitment on the part of China granting Japan the right to veto railways in Manchuria " parallel " to the South Manchuria Railway.[26]

The scholar, whose interest is to find truth, cannot be expected to accept an " alleged " text of any document, until it is supported by sufficient official or extraneous evidence to prove, beyond question, its validity and character. Until such a time, therefore, as an official verbatim version of these mooted agreements is published, with the approval of both the Chinese and Japanese governments as to their details, the scholar who can have a claim to impartiality, accuracy and realism must refrain from accepting the so-called " protocols " at their face value.

The official attitude of the Chinese Government toward these "protocols ", however, is equally important with that of any other government, and it is that very attitude which leads one to the conclusion that, while the current texts may not be entirely accurate, some form of agreement with Baron Komura was, in fact, signed by Yuan Shih-k'ai during the Peking conferences in December of 1905, and that

[26] Rockhill, W. W. *Treaties, Conventions, Agreements, etc., relating to China and Korea,* 1904-1908. p. 140.

Professor A. M. Pooley of Cambridge University, without giving his authority therefor, has stated that, " from the evidence in the possession of the State Department at Washington it is clear that no secret treaty ever existed . . . . " (*Japan's Foreign Policies,* p. 35.) Again: " Her reliance on the secret treaty carried weight with Great Britain, but with no one else, as may be gauged from the records of the State Department at Washington." (*Ibid.,* p. 49.)

these took the form rather of signed "minutes of conferences" than of formal protocols attached to the treaty and agreement of that date. The fact is that the Chinese Government have neither denied the existence of some such commitments, nor approved the various versions which have been disseminated abroad from alien sources.[27] What the Chinese Government have done is to deny that these commitments have subsequently been properly interpreted by the Japanese Government.[28] It will be necessary, therefore, to postpone an attempt at legal interpretation of the application of these alleged "secret protocols" until we have considered a successful attempt made by the Japanese Government to resort to them in order to veto foreign-financed railways in southern Manchuria. Japanese official claims to proscribe such participation of foreign capital in the construction of Manchurian railways have subsequently been based on Article 3 of the "protocols":[29]

[27] Cf. Clyde, *op. cit.*, p. 105. Dr. Clyde conveys the view that they have been specifically denied by the Chinese Government. The careful student may judge for himself whether the following statement of Dr. Clyde is entirely tenable: "There now seems to be no justification for the cloud of mystery which has enveloped these protocols. They have been considered first as 'alleged' and secondly as 'secret'. For neither of these qualifications does there appear to be any justification."

[28] This was in 1907-08, during the period of Japanese opposition to the Hsinmintun-Fakumen railway project. T'ang Shao-yi's assertion of 1908 will be considered in context.

[29] MacMurray, Vol. I, p. 554. A somewhat different version, said to be a personal translation from a Japanese-language text, was pub-

"The Chinese Government engage, for the purpose of protecting the interests of the South Manchurian Railway, not to construct prior to the recovery by them of said railway, any main line in the neighborhood of and parallel to that railway, or any branch line which might be prejudicial to the interest of the above-mentioned railway."

If this article were to be taken at its face value it would mean simply that Japan might have prevented the construction, not only of railways financed with foreign capital, other than Japanese, but of railways financed exclusively by the Chinese themselves. As such, it was obviously in direct abrogation of the pledge made by the Japanese Government in the treaty of Portsmouth "not to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria".[30]

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lished by Dr. K. Asakawa in 1908, as follows: "The Chinese Government, with a view to protecting the interests of the South Manchuria Railway, agree not to construct in its neighborhood, before the recovery of that railway, a trunk line in parallel thereto or a branch line detrimental to the interest of that railway." (*Yale Review*, August, 1908, p. 206.) Dr. Asakawa does not, however, give a source for the Japanese text he translates.

[30] MacMurray, Vol. I, p. 522. For Japanese contracts and options to finance the construction of specific railway projects, see Chapter VIII.

CHAPTER IV

The Japanese Attitude toward Foreign-Financed Railways: 1907-1908

During the period from 1907 to 1910 three proposals for the introduction of foreign and international capital in railways in southern and western Manchuria offered opportunities for testing Japan's claim of right to veto foreign-financed railway projects.[1] Whatever may have been the exact nature of the so-called "secret protocols" attached to the treaty and additional agreement between China and Japan, signed at Peking on December 22, 1905, the first test case, that of the project for the construction of the Hsinmintun-Fakumen railway by a British firm, Pauling and Company, resulted in successful invocation of the alleged "protocol" provision by the Japanese Government. The diplomatic issue—and it was one which, as much as the Russo-Japanese war itself, roused Chinese feelings, and, at the same time, stirred discussion in the British Parliament—furnished new evidence as to the exact character of the commitment which had been obtained by Baron Komura at Peking in 1905. The

[1] These were the British-financed Hsinmintum-Fakumen railway project, the Anglo-American scheme for the construction of the Chinchow-Aigun railway, and the plan of Secretary of State Philander C. Knox for "neutralization" of the Manchurian railways.

defeat of the Pauling and Company project, due especially to the disinclination of the British Foreign Office to permit this private commercial scheme to create embarrassing rifts in the smooth operation of the Anglo-Japanese alliance of 1905, became a precedent upon which the Japanese Government subsequently based a claim to oppose construction with British and American capital of the Chinchow-Aigun scheme.

1. Defeat of the Hsinmintun-Fakumen Railway Project. On November 8, 1907, an agreement was signed by Messrs. Pauling and Company with the Chinese Government, which provided for the construction of a railway, about fifty miles in length, from Hsinmintun, the northern terminus of the Imperial Railways of North China, to Fakumen, a trade mart west of Tiehling and Kaiyuan, these being situated on the South Manchuria Railway, north of Mukden. The funds for construction were to be obtained by a loan to the Chinese Government from the British and Chinese Corporation.[2] This was the firm, it is to be noted, which had originally obtained

[2] The terms of the contract obtained by Pauling and Company are indicated in the following entry in Willard Straight's diary: "ffrench signed his contract today [November 8, 1907] at about 5 o'clock, and was as pleased as punch. It provides for 50 miles at £6,500 per mile, £20,000 to be devoted to stations, telephones, telegraphs and the like." Straight noted that there was a supplementary agreement providing for financing the construction of an extension to Tsitsihar several hundred miles to the north, to cross the Chinese Eastern Railway. (Croly, Herbert. *Willard Straight*, p. 243.) *Vide:* Lawton, *op. cit.*, Vol. II, pp. 1208 ff.; Pooley, *op. cit.*, pp. 48 ff.

the 1898 contract from the Chinese Government for the construction of the Shanhaikwan-Newchwang-Hsinmintun system, and of extensions or branches of that system in southern Manchuria. As a matter of fact, the construction of such a line, as projected by Pauling and Company in 1907, had long been considered by the Chinese Railway Administration. With the Chinese Eastern Railway and the South Manchuria Railway in the control of the Russians and Japanese respectively, the building of such a new extension as the Hsinmintun-Fakumen line was a reasonable proposal for the Chinese Government, inasmuch as, for strategic reasons, if for no other, such a through-system to northern Manchuria was necessary for China to provide for defense of its own outlying territories in Manchuria. Hsü Shih-chang, the new Viceroy of Manchuria, therefore, had favored giving such a contract to the British firm, as a step in the direction of centralizing administration, and insuring success to his program of colonization in western and northern Manchuria.[3] It was T'ang Shao-yi, Governor of Fêngtien province, however, who was principally responsible, among the Chinese officials, for instituting and sponsoring the negotiations with Mr. J. O. P. Bland, who represented Messrs. Pauling and Company.[4]

[3] Hsü: *Tung San Shêng Chêng Lüeh* (*Record of Administration in The Three Eastern Provinces,* under Viceroy Hsü Shih-chang, 1907-08.) Cited by Hsü Shu-hsi, *China and Her Political Entity,* p. 294.

[4] Bland, J. O. P. *Recent Events and Present Policies in China,* p. 219. Croly, *op. cit.,* pp. 243 ff.

The Japanese Government made initial protests against the granting of this construction contract for the Hsinmintun-Fakumen railway extension even before the contract had actually been signed. At the outset, Japan based her right of veto on the clause in the "protocols" of 1905, said to have been signed by the Japanese and Chinese plenipotentiaries in Peking.[5] Another protest was made in October, and a third in November, 1907. Later, in February, 1908, the Japanese Government made the suggestion that Japanese consent might be had in case China would agree to extend the line so as to connect with the South Manchuria Railway at Tiehling. The controversy dragged on until it was finally settled, favorable to Japan, by the Sino-Japanese agreement of September 4, 1909.[6]

It is not our purpose here to discuss those diplomatic phases of this much-mooted question which are not germane to the legal issue involved. It is rather to inquire into the declared bases for the Japanese action, to evaluate the Chinese rejoinders, and to relate this subject to the main issue of Japan's posi-

[5] Bland, *op. cit.*, p. 219. It is likely that Mr. Bland knew of the initial protest when he signed the contract in November, 1907, although he himself was inclined to credit T'ang Shao-yi with duplicity in the matter, inasmuch as he failed to mention the protest or warning of Japan on the day the contract was signed. (Cf. Croly, *op. cit.*, p. 243.) Dr. Morrison, the correspondent of the London *Times*, had been sent to London to "fix" the British Foreign Office—though, in this, he failed. (Cf. Lawton, *op. cit.*, Vol. II, p. 1209.)

[6] MacMurray, Vol. I, p. 790.

tion with respect to foreign-financed railways in Manchuria.

At the outset, this diplomatic controversy over the Hsinmintun-Fakumen railway may be said to have established the fact that some form of commitment on the part of China had actually been obtained by the Japanese plenipotentiaries at Peking in December of 1905. In fact, it appears that those so-called " protocols " were in reality signed minutes of the conference and that, while they contained clauses conceding Japan the right to interpose a veto on certain proposals for railways " in the neighborhood of, or parallel to " the South Manchuria Railway, they also contained evidence that this particular phrase was rimmed round with certain qualifications insisted upon by the Chinese plenipotentiaries.

The Chinese delegates at the Peking conference had endeavored to obtain from Japan a clear-cut definition of the term " parallel " railway in order to preclude a unilateral interpretation of the term which would potentially constitute a claim of right on Japan's part to veto the construction of any railway in southern and western Manchuria, whether within twenty-five or a hundred miles of the South Manchuria Railway. The Chinese Government, in replying to the Japanese protest that the proposed Hsinmintun-Fakumen line was in violation of the clause in the " protocols " of 1905, declared that " at the time the plenipotentiaries of China and Japan

discussed the matter [in 1905], the plenipotentiaries of China maintained that the word ' parallel ' was too comprehensive and that it was necessary to give distance in miles ", thus to state definitely the limits of a zone within which the Japanese Government might have the right to be first consulted as to proposals for railway construction.[7] The Chinese note pointed out that, as a result, there had been no agreed definition of the term " parallel " railway, since the Japanese delegates had asserted that such a definition would create the impression that Japan intended to restrict Chinese railway enterprises in Manchuria. To the Chinese request that a definition in miles be given, in accordance with American and British practice, the Japanese had replied that there was no generally observed rule on the subject. The Chinese note, furthermore, in replying to the Japanese protest against the construction of the Hsinmintun-Fakumen railway, pointed out that, at the Peking conference, the Japanese delegates had stated, and that this statement was included in the " minutes of the conference ", that Japan " would do nothing to prevent China from any steps she might take in the future for the development of Manchuria ".[8] It appears, therefore, that the Chinese Government, while admitting the existence of signed

[7] Lawton, *op. cit.*, p. 1222. Quotation from Hsü Shu-hsi, *op. cit.*, p. 295, who has translated the Chinese original: Hsü Shih-chang's documents on Manchuria.

[8] Hsü Shu-hsi, *op. cit.*, pp. 295-296; Lawton, *op. cit.*, Vol. II, pp. 1222-1223.

minutes of the Peking conference of December, 1905, contested the Japanese official interpretation of the significance of the very clause which was asserted as justification for Japanese opposition to the Hsinmintun-Fakumen railway.

Although the Japanese Government did not rest their claim of right to veto this British-financed railway project solely on the grounds of the declared existence of the "protocol" of 1905, it is apparent that, in the main, Japan's claims rested principally thereon. The first question, then, is whether this railway, if constructed, would actually have been a "parallel" railway in a reasonable definition of the term. The term had not been defined. As a matter of fact, this railway, if constructed, would have been geographically parallel to the South Manchuria Railway: Hsinmintun lies about thirty miles west of Mukden; Fakumen is about twenty-seven miles from Tiehling; a railway between these points would have paralleled, in a geographical sense, the South Manchuria Railway between Mukden and Tiehling. The Newchwang Chamber of Commerce, composed especially of Britishers, in a lengthy statement to the British Foreign Office, which was widely published in the orient, asserted that, inasmuch as the Liao river constituted a "natural traffic boundary" between the projected line and the South Manchuria Railway, the normal movement of goods traffic of the region which would be served by the proposed railway would be toward Newchang—more ac-

curately Yingkow. The chamber concluded, therefore, that " the country to be operated [served] by the proposed line cannot be considered to be ' in the neighbourhood of ' the South Manchuria Railway ".[9] A maximum of thirty-five miles was, in the opinion of the chamber, the most that any government could claim as the limit of a zone within which to veto construction of a railway on the ground that it was a " parallel " or competitive line.

To this the Japanese Government saw fit to reply with a lengthy press statement to the effect that the Liao river was not the " natural traffic boundary " between the South Manchuria Railway and points in western Manchuria. Japan pointed out that, under Manchurian conditions, where goods move, especially in winter, by carts drawn for distances of upwards of thirty-five miles, no absolute standards of a distance limit, for purposes of delimiting a natural traffic zone, could be laid down.[10] Their claim rested definitely on this assertion: " Manifestly a railway that is near enough to another line to enter into competition with such other line, must be regarded as in the same neighborhood."

There is room for difference of opinion—perhaps of expert opinion—as to whether, if a reasonable construction be given the term here in question, the Hsinmintun-Fakumen project would actually have resulted in a line " parallel " to the South Man-

[9] Lawton, *op. cit.*, Vol. II, pp. 1223-1224.
[10] *Op. cit.*, Vol. II, pp. 1224, 1229.

churia Railway. Dr. George Morrison, the China correspondent of the London *Times*, held that it was not, principally because the construction of such a line would have developed an area not then served by the South Manchuria Railway.[11] Dr. Morrison accepted what, in any event, must have been conceded as fact, that cart traffic would actually tend to move toward the nearest railway, provided rates and facilities were approximately competitive, but asserted that " this attraction would not constitute effective competition in the sense in which that phrase is used throughout the railway world ". Pushed to its logical conclusion, wrote Dr. Morrison, the Japanese argument would mean that China was estopped from constructing any railway in western Manchuria, since it was obvious that, under local conditions, cart traffic did actually move for even a hundred miles to the South Manchuria Railway assembling points, such as Kaiyuan and Tiehling. There was no other railway outlet.[12]

[11] The London *Times*, September 28, 1908. Article signed " from a correspondent ". Dr. Morrison's commentary is interesting for a dual reason: " The Fakumen question allows of treatment and of settlement upon issues of fact, without inopportune debate upon issues of principle. Without admitting or denying the validity of the protocol to the Treaty of 1905, or of Japan's claim to enjoy the alleged rights which Russia asserted before the war, or the bearing of either upon the rights of third parties, and upon the doctrines of the 'Open Door' and of 'equal opportunities', it may be urged that the projected Fakumen extension would not be a breach of the protocol or of Japan's claim at all."

[12] Lancelot Lawton and E. J. Harrison seem to have agreed with Dr. Morrison's interpretation, Mr. Harrison having written as follows: " . . . . It is obvious that almost any new line of any length within

The Japanese Government, however, did not rest their claim to veto the construction of the Hsinmintun-Fakumen railway project solely on the grounds of the declared existence of a prohibitive article in the agreement of 1905 with China. Japan asserted that this agreement confirmed her in the possession of rights, which, in any event, were transferred from Russia by the treaty of Portsmouth, and were approved by China in the formal treaty of Peking of December 22, 1905. The Japanese Government pointed out that by virtue of the treaty of Portsmouth Japan had fallen heir to " all the rights, privileges and properties " of Russia in the South Manchuria Railway, and that this constituted a treaty guarantee that such prior rights as Russia may have had to veto railway construction in Manchuria, under agreements obtained between 1896 and 1904 from China, were, after 1905, the rights of Japan. Japan particularly emphasized the clause contained in the Sino-Russian agreement of April 8, 1902, to the effect that, in case extensions of the Shanhaikwan-Hsinmintun railway were contemplated in future, " these questions shall first form the subject of mutual discussion between the Russian and

the confines of North or South Manchuria must in a relative sense rank as a more or less competitive service to the South Manchuria and Chinese Eastern Railways, and if protests from Russia and Japan or both are to be raised at every turn, the situation will simply amount to this, that the economic development of the Three Eastern Provinces is forever to be retarded in the interests of two alien Powers and to the detriment of China herself." (Harrison, E. J. *Peace or War East of Baikal?* p. 176.)

Chinese Governments ".[13] Consequently, if there were to be any room for protest against the action of the Japanese Government, that protest was within the discretion of the Russian Government.[14] Moreover, the Japanese Government took note of the fact that the Anglo-Russian agreement of 1899, which delimited the " spheres " within which each might seek, or support their nationals in seeking, " concessions " for railways, reserved that portion north of the Great Wall to Russia.

As to the first of these two assertions, it may be said that no impartial international tribunal has ever been privileged to place a juristic interpretation upon the meaning in law of the article of the Portsmouth treaty which transferred the former Russian rights to Japan. Here, as in so many clauses of this important treaty, the criticism of Professor de Martens that it was carelessly drawn, is particularly applicable. Mr. Lawton, for one, asserted that it could reasonably be objected that the clause was here applicable to such a convention as the Russo-Chinese convention of 1902. It was not, in his view, one of the privileges appertaining to the Chinese Eastern Railway, but was an independent provision, conceded to the Russian Government, out of circumstances which existed in 1902, but which had disappeared after Portsmouth.[15] A perhaps more valid criticism is

[13] MacMurray, Vol. I, p. 328.

[14] Lawton, *op. cit.*, Vol. II, p. 1211.

[15] Lawton, *op. cit.*, Vol. II, p. 1216. The Russo-Chinese convention of April 8, 1902, was, in reality the well-known Evacuation Conven-

that, taken together with other articles of the treaty of Portsmouth, especially that which provided that Japan and Russia would take no steps " to obstruct any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria ", the right to veto any railway construction not actually prejudicial to the continued operation of the South Manchuria Railway as a profitable enterprise could hardly be said to have been transferred to Japan by the treaty of Portsmouth. China had agreed to the general principle of transference of the Russian rights on the condition—since this article is clearly stipulated in the treaty itself—that neither Japan nor Russia could subsequently claim any veto right beyond what was reasonably necessary to maintain their respective railway systems as economically profitable enterprises.

The Chinese Government, as a matter of fact, pointed out, in reply to the Japanese protests, that the assertion of such a right was contrary to Article 4 of the treaty of Portsmouth. To this Japan replied that " the treaty of Portsmouth was between Japan and Russia, and if Japan has concluded engagements with other Powers inconsistent with that Act, it is for Russia to call her to account ".[16] In one sense, the

tion, consequent upon the occupation of all railways in southern Manchuria by the Russian troops during the Boxer Rising.

[16] Lawton, *op. cit.*, Vol. II, p. 1218. Pooley, *op. cit.*, p. 49. Professor Pooley wrote of this assertion: "It would be interesting to know whether a refusal to allow China to build a railway on her own terri-

Japanese Government were here quite correct, for this was a bilateral agreement, but it might reasonably be argued, also, that China's consent to the transfers made by virtue of the Portsmouth treaty was obtained on condition that the clear intent of that treaty, as evidenced by Article 4, as by any other article, was subsequently to be fulfilled.

The issue of right involved in the treaty of Portsmouth is, moreover, not so simple as reference to any one clause might make it appear. Here was a situation in which the rights of third states were clearly involved. An impartial judgment of the issue would have to take account of the repeated pledges of the Japanese Government, between 1898 and 1907, to observe the two cardinal principles of policy to which all principal powers, interested in China, had repeatedly given assurance of adherence, namely, the principle of non-interference with the territorial and administrative integrity of China, and that of insuring equality of opportunity for the trade and commerce of all nations. Japan had very clearly declared allegiance to this policy in the Anglo-Japanese convention of alliance of 1905, and had done so on other occasions. The claim that Germany was pursuing a monopolistic policy in Shantung, which was cited as partial justification for Japan's doing the same thing in Manchuria, could have had no

tory is or is not an impairment of Chinese sovereignty, and whether such a railway as that proposed was not a measure for the 'development of the commerce and industry of Manchuria'."

weight in proving other than that both were inclined to scout the importance of their adherences to the broad principles above referred to. Moreover, the claim of a privately-financed railway to veto the construction of competitive lines in its traffic area is a different thing from that of a government, operating through a railway which is actually controlled by that government itself, to do the same thing. Such a claim is indistinguishable from an assertion of political rights, rights which affect the administrative integrity of China.[17]

The Japanese reference to the silence of Great Britain and the existence of the Anglo-Russian exchange of notes of 1899 deserves comment. It should be pointed out, first, that this exchange of notes had attached to it, as has been pointed out elsewhere, an "additional note" to the effect that the general agreement was not to infringe in any way the prior rights of the British and Chinese Corporation under their contract of 1898. A strictly legal interpretation of that reservation compels the conclusion that this financial group, or its representative, was within its rights in basing the new contract on this original prior right. If, then, the British Government had felt inclined to do so, they might have contested the very right of China to concede a right of veto to the Russian Government under such subsequent agreements as those of 1899 and 1902. The British Foreign

[17] Cf. Hornbeck, S. K. *Contemporary Politics in the Far East*, p. 259.

Office, however, refrained from entering a protest, giving as a " good " reason the fact of the existence of the Anglo-Russian exchange of notes, and of the Peking " protocols " of 1905. The " real " reason, however, was obviously the disinclination of the British Foreign Office to disturb friendly relations with Japan. Behind their attitude was the Anglo-Japanese alliance of 1905. Consequently, Sir Edward Grey, the Foreign Minister, replied to a question in the House of Commons on March 3, 1908, that, in view of the Peking " protocol ", the British Government felt that " it is open to the contractors to prove, if they can do so, to the satisfaction of Japan that the proposed railway would not prejudice the South Manchurian line and so would not violate the agreement ".[18] This was another way of saying that, in view of the existence of the Anglo-Japanese alliance, the private interests of one or two British firms, having financial projects in Manchuria, ought not to be permitted to interfere with foreign office policy. Instead of offering support to a British firm in the effort to defend such of their claims as reasonably might have been considered legitimate, the report of Sir Alexander Hosie, a man who had long known Manchurian trade and diplomacy intimately, and who had been sent by the British Government to report on the situation, was suppressed.[19]

[18] *Parliamentary Debates*, 4th Series, No. 185, p. 527.

[19] Dr. Morrison, in a dispatch sent from Peking, January 22, 1909, expressed the opinion that the unwillingness of the British Government to publish the Hosie report supported the opinion that the

From this account of the Japanese opposition to the Hsinmintun-Fakumen railway project it may be sufficient to conclude, for our purposes here, that the incident was a most illuminating one to describe Japan's claims to what was tantamount to a monopolistic right to veto the construction of railways in southern Manchuria. The claim, it is to be noted, was not directed toward a railway which was, in its character, a political instrument of a foreign financing group. The British financiers there concerned did not even have such support from their government as might reasonably have been expected in defense of their prior vested interest, which dated back to 1898. Examination of the terms of the contract of November, 1907, reveals no " control " provisions which would brand this proposed railway as a political weapon of any government other than that of China.

It would be futile to assert that the Hsinmintun-Fakumen railway was either exclusively a " commercial " or a " strategic " project. All railways of any significance in Manchuria have always been both; the one characteristic cannot be disassociated entirely from the other. The Hsinmintun-Fakumen railway project, however, was admittedly an economic line in that Japanese official opposition was directed against its potential competition with the South Manchuria Railway. On the other hand, it is

report failed to defend the Japanese contentions. (Cf. Harrison, *op. cit.*, p. 307; Pooley, *op. cit.*, p. 50; Lawton, *op. cit.*, p. 1220.)

quite evident that, as the Japanese press contemporaneously pointed out, opposition to it was not alone because of its economic potentialities. The Japanese Government in this instance effectively asserted a claim of right to prevent China from constructing a railway on her own territory, and, by so doing, asserted a claim to what was tantamount to a monopoly of railway construction in southern and western Manchuria. By refusing to admit that the term "parallel" railway was susceptible of accurate definition, the way was left open for future ambiguity, and, consequently, for an interpretation in favor of the state which could bring to bear on the question more lethal arguments.

The only concession which Japan offered to make in connection with the Hsinmintun-Fakumen project was that, if construction were to be permitted, it should be extended so as to connect with Tiehling on the South Manchuria Railway. This would obviously have defeated one of the purposes for constructing the line. The Chinese Government, when confronted with this proposal, offered to submit the entire matter to the Hague Court of Arbitration for adjustment. This Japan refused.[20]

It would be difficult, moreover, to attempt to defend the assertion that the Chinese Government, and particularly T'ang Shao-yi, were not fully aware of the political implications, and consequently fully

[20] *North China Herald,* April 10, 1909. Lawton, *op. cit.,* Vol. II, p. 1220.

convinced of the desirability, from their point of view, of using this railway scheme to create dissention between Japan and Great Britain. Mr. J. O. P. Bland, one of the principal negotiators of the railway contract, paid tribute subsequently to the Chinese purpose in this regard. Willard Straight, the American consul-general at Mukden, favored, at the time, this introduction of British finance as a means of obtaining foreign support " to check the Japanese in Manchuria " in order to help the Chinese toward a realization of their hopes for economic and political independence.[21] The episode, however, revealed more clearly than clauses of conflicting documents just what was the nature of Japan's claims to a monopolistic sphere of railway interest in Manchuria. The outcome of the affair was that, by an agreement of September 4, 1909, China was constrained to grant to Japan the pledge that " in the event of its undertaking to construct a railway between Hsinmintun and Fakumen, it shall arrange previously with the Government of Japan ".[22]

[21] Croly, *op. cit.*, p. 243; Bland, *op. cit.*, p. 219.

[22] MacMurray, Vol. I, p. 790. Such a railway has, however, never been constructed, although, since 1915, and especially since 1925, both Japanese-financed and independently-financed Chinese Government railways have been built in surrounding territory.

This agreement of September 4, 1909, had for its purpose the settlement of several outstanding questions between the two countries in Manchuria. Principal of these was that of control of mines and mining rights along the Antung-Mukden railway, and the issue of the Fushun and Yentai coal mines. The agreement also settled the controversy over the inclusion of the Tashihchiao-Yingkow railway into the South Manchuria Railway system, and permitted the

extension of the Peking-Mukden railway to the city wall of Mukden, thus passing under the South Manchuria Railway right of way. It was the American representations with respect to what appeared to be an exclusive provision in this agreement, with respect to mining rights along the Antung-Mukden railway, that caused the so-called "Crane Incident" of 1909, when Mr. Charles R. Crane, who had been appointed Minister to China, was prevented from proceeding to his post, especially because of the attitude of Secretary of State Knox, who permitted local Republican politics and his own influence on President Taft to victimize Mr. Crane. It may be added that Mr. Crane had acted throughout this period in careful compliance with the instructions and personal suggestions of President Taft.

CHAPTER V

The Japanese Attitude Toward Foreign-Financed Railways: 1909-1910

1. The "Knox Neutralization Plan" and the Chinchow-Aigun Railway Project. While the Hsinmintun-Fakumen railway project was under discussion between the powers concerned, the Japanese Government had negotiated, as a result of extraneous causes, three agreements which reasserted on the part of the signatories adherence to the policy of maintaining the territorial and administrative integrity of China, and that of insuring equality of opportunity for the trade and commerce of all nations. The Russo-Japanese convention of 1907 has already been discussed. The other two were the Franco-Japanese agreement of June 10, 1907,[1] which provided that the signatories would "respect the independence and integrity of China, as well as the principle of equal treatment in that country for the commerce and subjects or citizens of all nations", and the so-called Root-Takahira agreement of November 30, 1908,[2] with the United States, which similarly provided, besides undertaking to respect the *status quo* in the Pacific region, that they would "by all pacific means at their disposal" *support* "the inde-

[1] MacMurray, Vol. I, p. 640.
[2] *Ibidem*, p. 769.

pendence and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire ". This latter agreement to maintain the *status quo* in the entire Pacific area naturally had a certain application to Manchuria. It did not, however, eliminate any existing conflict of rights or interests there, based on prior legal claims of the two signatories.[3]

Practically the same issue as to Japan's claims to veto foreign-financed railway construction in Manchuria was raised again, however, shortly thereafter, when an Anglo-American financial group obtained a contract from the Chinese Government for the construction of the Chinchow-Aigun railway in western Manchuria. This time, however, Russian interests were involved. The British Government's disinclination to support the contract rights of their nationals was very much as pronounced as in 1907-08. A new and extraneous issue was introduced when Secretary of State Philander C. Knox presented a proposal for " neutralization " of all Manchurian railways, under some form of international finance, but based on the principle of recognizing China's sovereign rights with respect to all Manchurian railways. This proposal, both because it was contemporaneous with the Anglo-American private project for financing the construction of the Chinchow-Aigun railway, and because the two issues were associated

[3] Cf. Willoughby, *op. cit.*, Vol. I, p. 175. *Vide:* Croly H. *Willard Straight,* pp. 274-275.

in the diplomatic controversy that resulted, may best be treated together with the Chinchow-Aigun railway project.

On October 2, 1909, the Viceroy of Manchuria and the Governor of Fêngtien province signed a preliminary agreement with the British contractors, Pauling and Company, and an American banking group for the construction of a railway from Chinchow, a city on the Peking-Mukden Railway, to Aigun, a city on the Chinese side of the Amur river in the far north of Manchuria,[4] in Heilungkiang

[4] Full text in *U. S. For. Rels.*, 1910, pp. 232 ff. The principal provisions of the Chinchow-Aigun contract between the provincial authorities of Manchuria and the American banking syndicate, represented by Willard Straight as agent, were the following: Participation in the loan was to be permitted others outside the American group itself, these other "associates", however, to be restricted to participation up to 40% of the capital loan, their inclusion to be subject to approval by the Chinese Government. The Manchurian Administration agreed to borrow from the syndicate the sum necessary for the construction of a railway between Chinchow and Aigun, the rate of interest to be 5%, the terms of flotation to be arranged in a supplementary agreement. Interest and amortization were guaranteed by the Chinese Government with the railway line as security. In case the railway receipts were insufficient to meet interest and amortization, certain revenues of Manchuria might be used, the details to be arranged later. The first bond issue was to be sufficient for the construction of the line from Chinchow to Tsitsihar; the second, for the line from there to Aigun. A separate construction contract was to be made by the Manchurian authorities with a construction firm, Messrs. Pauling and Company, who were to designate the chief engineer for the period necessary for building the line, he to be responsible to both the railway company and the Chinese Board of Communications. This railway company was to receive 10% return after payment of interest and amortization. It was specifically provided that the company was to be composed of Chinese, Americans

province. The route was to pass through Tsitsihar, a point on the Chinese Eastern Railway. The agreement was signed, in behalf of the American group, by Mr. Willard D. Straight, former American consul-general at Mukden, who had become the agent of the bankers, including J. P. Morgan and Co., Kuhn, Loeb and Co., The First National Bank, and the National City Bank of New York.[5] Lord ffrench, who had represented Pauling and Company in the 1907 negotiations for the Hsinmintun-Fakumen contract, now represented the same firm, which was to undertake the actual work of construction of the proposed Chinchow-Aigun line. It is evident that this particular proposal for the western Manchuria railway was urged upon Mr. Straight by Chinese officials in Peking, in August of 1909, shortly after he had returned to China as the representative of the newly-formed American banking group.[6] From the American point of view, such a project, aside from being

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and British, and that admission of other nationals was to be conditional on the consent of the Chinese Government. A separate memorandum of agreement was signed on the same date between the American financing group and Pauling and Company, the contractors. (*U. S. For. Rels.*, 1910, p. 233.) An estimate of £6,000,000 was made for construction costs for the entire route. (*Ibidem*, p. 262.) This preliminary contract was replaced by a formal and definitive one of April 26, 1910.

[5] Straight had been recalled by the Department of State in July, 1908. (Croly, H. *Willard Straight*, p. 265.) The proposals for a foreign loan for Manchuria, for agricultural and industrial development and other purposes, which Straight then had in his *dossiers*, will be considered briefly in the following section.

[6] Croly, *op. cit.*, pp. 301 ff.

an initial step toward entry of American finance into Manchuria, was considered a valuable evidence of activity as a result of which they might be better qualified to bargain for an equitable share in the proposed Hukuang railway loans in China proper.

Independent negotiations between Lord ffrench and the Chinese authorities pertaining to such a new Manchurian line had begun while Straight was in the United States. This fact, and Straight's feeling that the prior rights of Pauling and Company under their contract of 1907 ought to be given due consideration, counselled the formation of the joint Anglo-American enterprise, in which the British firm was to be given the construction contract, the finances for the same to be raised by an American loan. Because of delays caused by the attitude of certain officials in Peking, however, Straight proceeded to Mukden, where he signed the preliminary agreement on October 2, 1909.[7] The agreement was formally ratified by imperial edict on January 20, 1910.[8]

On November 6, 1909, the American State Department, having taken cognizance of the negotiation of

[7] The agreement was, however, not "final or irrevocable" on the part of either signatory, neither of the signatories having received plenary authority from their superiors or principals. (Croly, *op. cit.*, p. 303.) Straight: "I fully realize that I have exceeded my instructions." Quoted from a letter to J. P. Morgan and Company. Straight, however, explained that it was imperative, if the contract were to be obtained at all, to sign immediately, in view of the insistence of the Viceroy. (p. 304.) Straight's principals did not, however, repudiate the agreement he had signed.

[8] *U. S. For. Rels.*, 1910, p. 248.

the Anglo-American loan and construction agreements for the Chinchow-Aigun railway, communicated to the British Foreign Office the outline of a proposal which has since become known as the "Knox Plan" for the "neutralization" of Manchurian railways.[9] This proposal was an outgrowth of the independent negotiations which had been conducted especially by Mr. Straight as the agent of the New York banking group. The two projects, the purely private interest of the American bankers and the official proposal of Secretary Knox, must, therefore, be considered simultaneously, especially since opposition to one actually defeated the other. The "Knox Plan" was, also, in a sense, a product of the long-cherished project of the late Mr. E. H. Harriman for purchasing both the Chinese Eastern Railway and the South Manchuria Railway, under conditions which would enable China to recover each of them before the dates specified in the original contracts of 1896 and 1898. It may be recalled that immediately after the signing of the treaty of Portsmouth, Mr. Harriman had negotiated through Marquis Ito and others a preliminary agreement for the purchase of the newly acquired Japanese line in southern Manchuria, and that, due especially to the opposition of Baron Komura upon his return from Portsmouth, Mr. Harriman was informed, upon his arrival in San Francisco, that the Japanese Govern-

[9] *Ibidem*, p. 234. Willoughby, W. W. *op. cit.*, pp. 175 ff.

ment was not willing to dispose of the line.[10] But Mr. Harriman's interest in Manchurian railways did not cease: during 1907 Consul-General Straight had urged upon him participation in a proposed railway between Hsinmintun and Fakumen, and an extension to Tsitsihar, which project was eventually contracted for by British interests, with the approval of Straight.[11] In the autumn of 1908, upon Mr. Straight's return to home duty in the State Department, he presented to Mr. Harriman the proposal of the Mukden authorities for a loan to finance the formation of a Manchurian bank, the same to have as its principal purpose the financing of railways there.[12] This, also, failed for the time being, since the credentials of T'ang Shao-yi to conduct such nego-

[10] Croly, *op. cit.*, pp. 238 ff. Mr. Harriman's desire to acquire these railways was, as is well known, a part of his scheme for a round-the-world transportation service. Baron Komura had evidently obtained assurance of British capital loans for the running expenses of the soon-to-be-formed South Manchuria Railway Company. *Vide:* Overlach, T. W. *Foreign Financial Control in China,* pp. 206-207.

[11] Croly, *op. cit.*, p. 242.

[12] Croly, *op. cit.*, p. 270. It is quite clear that the State Department at this juncture gave no official support to the project which was sponsored by Straight and Harriman. Secretary Root was at the time negotiating the so-called Root-Takahira agreement with Japan. Mr. Jacob H. Schiff and Mr. Otto Kahn became interested in the project and informed Straight that they were willing to discuss the proposal with T'ang Shao-yi. At this juncture, November, 1908, Tang's credentials became questionable, since his sponsor, Yuan Shih-k'ai had fallen into disfavor with the Court, both the Empress Dowager and the Emperor Kwang Hsü having died during the month. Prince Chün, become Regent, eventually dismissed Yuan Shih-k'ai in January, 1909.

tiations were made questionable by the appointment of Prince Chün as Regent in late 1908.*

A related prelude to the "Knox Plan" for "neutralization" of the Manchurian railways may be found in the private negotiations which Mr. Jacob H. Schiff of Kuhn, Loeb and Company, had carried on with Mr. Gregory Wilenkin, formerly Russian financial agent in the United States and at that time in Japan, and others, who gave Mr. Schiff reason to believe that the Russian Government would be willing to sell their rights in the Chinese Eastern Railway.[13] Mr. Schiff also exchanged considerable correspondence with Baron Shibusawa, who, while not at the time an official in the Japanese Government, was competent to conduct preliminary negotiations on the subject which Mr. Schiff had proposed along with the plan to purchase the Chinese Eastern. This was the purchase of the Japanese rights in the South Manchuria Railway.[14] Through Baron Shibusawa, Mr. Schiff had made a definite proposal to Baron Takahashi, head of the Yokohama Specie Bank, for purchase of the South Manchuria Railway by an American financial group. In January, 1909, however, Mr. Schiff had been informed from Tokyo that the Japanese Government could not consider such a proposal.[15] Consequently, after the signature

* Mr. Harriman died in 1909.

[13] Croly, *op. cit.*, pp. 278 ff, p. 320. Kuhn, Loeb and Company were Mr. Harriman's bankers.

[14] Croly, *op. cit.*, p. 279. Overlach, *op. cit.*, p. 207.

[15] Croly, *op. cit.*, p. 279.

of the Hukuang railway contract in June, 1909,[16] there were these three influences—the original Straight-Harriman proposals, the Schiff proposals, and the Hukuang railway contract—which seem to have influenced the Department of State to take an active interest in Manchurian railway affairs. Out of this combination came the "Knox Plan" for "neutralization" of the Manchurian railways. It does not appear, however, that Secretary Knox received any definite proposals from Schiff or Harriman for launching any official program of so-called "neutralization". In the meantime the banking group, which in October, 1909, signed the contract for the Chinchow-Aigun railway, had been formed.[17]

Out of this movement, which had been originated by private American banking and British contracting interests, came the proposal of Secretary Knox, sent to the British Foreign Office, through Ambassador Reid at the Court of St. James, on November 6, 1909. This communication contains the essence of the so-called "Knox Plan", which was the subject of a memorandum which the ambassador was instructed to present to Great Britain. It began with acknowledgment that the Chinchow-Aigun contract had been signed in October, and suggested Anglo-American diplomatic coöperation in supporting that private project. The Knox proposal was presented,

[16] MacMurray, Vol. I, p. 880.

[17] In June, 1909, Willard Straight had resigned from the foreign service of the Department of State.

then, as an "alternative" to the Chinchow-Aigun project, the former being outlined as follows:[18]

"Perhaps the most effective way to preserve the undisturbed enjoyment by China of all political rights in Manchuria and to promote the development of those Provinces under a practical application of the policy of the open door and equal commercial opportunity would be to bring the Manchurian highways, the railroads, under an economic, scientific, and impartial administration by some plan vesting in China the ownership of the railroads through funds furnished for that purpose by the interested powers willing to participate. Such loan should be for a period ample to make it reasonably certain that it could be met within the time fixed and should be upon such terms as would make it attractive to bankers and investors. The plan should provide that nationals of the participating powers should supervise the railroad system during the term of the loan and the governments concerned should enjoy for such period the usual preferences for their nationals and materials upon an equitable basis *inter se*. The execution of such a plan would naturally require the cooperation of China and of Japan and Russia, the reversionary and the concessionaries, respectively, of the existing Manchurian railroads, as well as that of Great Britain and the United States, whose special interests rest upon the existing contract relative to the Chinchow-Aigun Railroad."

The memorandum continued by asserting that the advantages of such a plan for Russia and Japan were obvious; that, inasmuch as both had repeatedly declared their adherence to the policy of guaranteeing the "unimpaired sovereignty" of China and of maintaining equality of opportunity for trade and

[18] *U. S. For. Rels.*, 1910, p. 234.

commerce in Manchuria, such a plan would relieve them of duties and responsibilities associated with independent management of their respective railways. It declared that the United States Government had " some reason to hope that such a plan might meet favorable consideration on the part of Russia " and affirmed that American financial participation was assured. In case this proposal were not feasible, then the United States would desire active participation of the British Government in supporting the Chinchow-Aigun project, the same to be financed by such powers as were " friendly to complete commercial neutralization of Manchuria ".[19]

To this communication the British Foreign Office, through Sir Edward Grey, replied on November 26, expressing agreement with the " general principle " involved in the Knox neutralization proposal as a plan " well adapted to securing to China full control in Manchuria ", but suggesting that the matter be delayed until the Hukuang loan negotiations were finally completed. As for the proposal with respect to Anglo-American official support of their private business interests in the Chinchow-Aigun contract, the British Foreign Office, evidently feeling that the Russian and Japanese governments had not yet been fully sounded out in the matter, suggested that Great Britain and the United States " should unite in endeavoring to persuade the Chinese Government to

[19] *U. S. For. Rels.*, 1910, pp. 234-235.

admit the Japanese to participation in the Chinchow-Aigun line, as being the parties most interested ".[20]

By this time the Anglo-American contract for the Chinchow-Aigun project had begun to stir interest in the press of several interested states, especially in Japan. On December 14, 1909, the Knox proposal to Great Britain was sent by the Department of State to the foreign offices of Japan, China, Russia, France and Germany.[21] On December 15, Ambassador O'Brien at Tokyo was instructed to inform the Japanese Government that the United States " would welcome Japan's support " in securing China's consent to the inclusion of Japanese capital in the Chinchow-Aigun project.[22] Inasmuch as Germany and France played no important rôle in the subsequent diplomatic controversy, it may be sufficient merely to state that the German Government accepted the Knox proposal without qualification, while the French Government hesitated to give active support

[20] *Ibidem,* p. 236. Some commentary on the British official attitude follows.

[21] *Ibidem,* p. 236.

[22] *Ibidem,* p. 237. It is evident that the original program of Mr. Straight did not contemplate the inclusion of Japanese finance in the Chinchow-Aigun railway, although some participation from the Russo-Asiatic (formerly the Russo-Chinese) Bank was anticipated. (Croly, *op. cit.,* p. 307.) On December 15, 1910, however, the American *Chargé* at Peking was instructed to coöperate with the British Minister toward obtaining China's consent to the participation of Japanese finance in the Chinchow-Aigun railway. Similar instructions were sent by the British Government to their minister at Peking. (*U. S. For. Rels.,* 1910, p. 237.)

until her ally, Russia, had been fully informed and had indicated a favorable attitude.[23]

It may here be pertinent to remark that the procedure adopted by the United States Department of State to secure the approval of the interested powers to the Knox plan and the Chinchow-Aigun project was, to say the least, extraordinary. Russia and Japan were obviously the two countries, other than China, who were most likely to interpose objections. Unless reasonable assurance had been obtained at the outset from these two countries, it was futile to expect any thorough-going coöperation, far less success for the entire scheme. As a matter of fact, Secretary Knox, either by placing too much reliance upon the assurances of Mr. Schiff that Russia would be willing to dispose of her interests in the Chinese Eastern Railway, or feeling that by enlisting the support of the British Foreign Office at the outset he would be better prepared to deliver a *coup de grâce* to Russia and Japan, made the initial blunder of opening official negotiations with Great Britain.[24]

[23] *Ibidem*, pp. 240, 256, 268. France later brought pressure to bear on the Chinese Government in support of the Russian position, especially urging upon it the Russian alternative proposal of the Kalgan-Urga-Kiakhta railway. (Lawton, *op. cit.*, Vol. II, p. 1357.)

[24] Croly, *op. cit.*, p. 311. "Apparently it assumed that Mr. Harriman had already obtained the consent of Russia and Japan, or that in so far as those Powers raised obstacles, it could best overcome them by assuring itself of British support." Evidence of the Russian feeling that their government had not been given due consideration at the outset of the negotiations initiated by Secretary Knox may be found in the note of the Russian Minister, Mr. Korostovetz, to the Wai Wu Pu, February 4, 1910, in which, *inter alia*, he said: " . . . . The

The State Department was no doubt aware that Mr. Schiff's private correspondence with Baron Shibusawa and Baron Takahashi had given no assurance of Japanese official support to any proposal for international operation of the South Manchuria Railway. The Knox proposal itself was sufficiently tangible as a preliminary project for consideration of the powers, but the methods used to secure the adherence of the powers concerned were most unfortunate. Considering the history of the Hsinmintun-Fakumen railway project and the disinclination of the British Foreign Office to exert itself in support of British financial interests in Manchuria on that occasion, it was hardly to be expected that Sir Edward Grey would suddenly reform his conceptions of the obligations of England under the Anglo-Japanese alliance. The initial reply of Sir Edward Grey to the first Knox note of November 6, 1909, was more a warning than an acceptance of the Manchurian railway plan.[25] Nevertheless, the State Department continued the negotiations and on January 6, 1910, gave to the press a more detailed statement of the "neutralization" plan.[26] This state-

opinion of Russia is that, in not notifying Russia, and in not considering that in case Russia did not take a share, she would oppose the undertaking, America is conscious of having made a mistake and has therefore stopped the loan negotiations. Russia expects that nothing will be settled without first obtaining the consent of Russia." (Lawton, *op. cit.*, p. 1353, which gives the text of the note.)

[25] The approval of the Chinese Government was obtained in January, 1910. (*U. S. For. Rels.*, 1910, pp. 240, 248.)

[26] *U. S. For. Rels.*, 1910, p. 243.

ment, by emphasizing that " the sight of the four great capitalist nations—Great Britain, Germany, France, and the United States—standing together for equality of commercial opportunity " in China would be an impressive object lesson to China and the world, was hardly of a character to elicit wholehearted support from Japan. It did emphasize, also, that the neutralization project was but a new form of the traditional policy of the " open door " in Manchuria, and that to this end the plan proposed " to take the railroads of Manchuria out of eastern politics and place them under an economic and impartial administration by vesting in China the ownership of its railroads ". It concluded with a quotation from the *Japan Mail* to the effect that " if all the railways forming part of the system which connects the west with the Far East were converted into a neutral estate a great contribution will be made to the peace of the world ".[27] Two days later, that is, on January 8, Ambassador O'Brien telegraphed from Tokyo that Japanese opposition was to be expected.[28]

Inasmuch as Japanese and Russian opposition to the Knox neutralization proposal was finally expressed on the same date, January 21, 1910, and since it is evident that the Russian attitude greatly af-

[27] *Ibidem*, p. 245. As a matter of fact, the *Japan Mail*, a semi-official organ at that time, was as bombastic as any Japanese vernacular paper in opposition to the Knox plan. (*Vide:* Lawton, *op. cit.*, Vol. II, p. 1329.) The Japanese press almost unanimously denounced both the Knox plan and the Chinchow-Aigun project.

[28] *Ibidem*, p. 245.

fected that of the Japanese Government, it may be well to describe the reasons which Russia alleged for her opposition. It is evident that Ambassador W. W. Rockhill had had informal conversations at St. Petersburg with Foreign Minister Isvolsky during October and November of 1909, and that the Chinchow-Aigun project was then broached to him. It is equally evident, however, that the Russian attitude was not reassuring. Consequently, when *Chargé* Schuyler presented Isvolsky in December with an *aide-mémoire* which set forth the advantages of the Knox proposals and urged Russian support, the Foreign Minister replied, in an interview with Mr. Schuyler on December 29, that the proposals " affected vitally Russian interests, economically and strategically " and that the Chinchow-Aigun contract was but another manifestation of " the hostility the United States had constantly shown Russia in the Far East for the last ten years ". The Russian Minister at Peking spoke equally plainly in opposition to the proposal. The formal protest of the Russian Government of January 21, therefore, was anticipated.

The Russian *aide-mémoire* which contained their objections to the Knox plan affirmed that " nothing appears at the present time to threaten either this sovereignty or the open door policy in Manchuria ", and asserted that Russia " cannot discover in the present condition in Manchuria any reason necessitating the placing on the order of the day of the

questions raised by the United States Government ".[29] The rejection of the Knox proposals was expressed with a note of finality:

"At the same time the Imperial Government believes that it must declare with absolute frankness that the establishment of an international administration and control of the Manchurian railroads as proposed by the Federal Government would seriously injure Russian interests, both public and private, to which the Imperial Government attaches a capital importance. This proposition cannot, therefore, meet with a favorable reception on its part."

The communication asserted that " the interests involved in the Chinese Eastern Railway are notorious ": in this railway system the contracting company had spent much money and energy with the firm anticipation that it would retain its rights for the full duration of the period stated in the original contract of 1896. To expect the " company "—which was, of course, the Russian Government—to relinquish those rights was to inflict an obvious injury; an enormous financial investment was involved. It frankly admitted that " the development of Manchuria and the exploitation of its natural resources are not the only purposes pursued by the Chinese Eastern Railroad ".

"The latter is a public interest of the first order to Russia. It constitutes the principal line of communication between the Russian possessions in the Far East and the rest of the Empire; it is also the great artery by which these possessions are supplied with Russian merchandise. In this way the line

[29] *U. S. For. Rels.*, 1910, pp. 249-252.

is but an integral part of the great Trans-Siberian Railway, which is used by almost all of western Europe in its relations with the Far East. It is this consideration that decided the Russian Government to guarantee, at very considerable expense, the capital invested in the construction of the Chinese Eastern Railway, and to cover the deficit resulting from its operation. It cannot, therefore, be a matter of indifference to the Imperial Government whether it is an international organ that administers a line of such importance, or, on the contrary, a Russian stock company which is obliged not to fix the rates and conditions of transportation of merchandise by the Chinese Eastern Railroad without the consent of the Russian Government, and which, by the very nature of the concession obtained, is closely connected with the interests of the nation."

With reference specifically to the proposed plan for international administration, the Russian *aide-mémoire* dubbed it untested and fraught with uncertainties. As to the Chinchow-Aigun project the Russian objection was somewhat less final: [80]

"Its accomplishment will open up a new route giving access from the south not only to the Chinese Eastern Railway, but directly to Russian possessions at Aigun. This shows adequately the strategic and political importance of the enterprise. Moreover, the construction of this line will essentially modify the conditions under which eastern Mongolia and the north of Manchuria are served by the Chinese Eastern Railroad. . . . . For these reasons the Imperial Government, while being willing in principle to take this question under consideration, hopes that it will be enabled to know the basis of the proposition in due time in order that it may, after a thorough examination, reach a final attitude with regard to the proposition itself as well as to its participation therein."

[80] *U. S. For. Rels.*, 1910, p. 250.

Consequently, Russia declared that "it must reserve the privilege of examining every project of this kind from a double standpoint of its political and strategical interests and of the interests of the Chinese Eastern Railroad."

A month later the Russian Government, in a memorandum handed the State Department by the Russian Embassy at Washington, dated February 24, 1910, closed the issue of their attitude toward the Chinchow-Aigun railway project by a categorical statement of open opposition.[31] It declared that "such a railroad would be exceedingly injurious both to the strategic and to the economic interests of Russia", and revealed, for the first time, the existence of the 1899 agreement with China, by which Russia thereafter asserted a right to be consulted with reference to any projects for railway extensions from Peking to the Chinese Eastern Railway in Manchuria.[32]

"China in 1899 engaged not to build railroads to the north of Peking with foreign capital other than Russian, and Russia could be willing not to insist on the execution by China of this

[31] *Ibidem*, p. 261.

[32] *Vide:* Ch. III, Section 1; Ch. II, Sec. 1. Cf. Willoughby, *op. cit.*, Vol. I, p. 181. On February 8, 1910, Minister Korostovetz handed to Prince Ch'ing a memorandum in which this claim was reasserted: "In regard to all future railways in Manchuria which China may propose to build with foreign capital, the Russian Government must be first consulted, and must first consider if the plans have any consequence to the military and political interests of Russia, or to the Northern Manchurian Railways, thereafter determining what must be done to balance the influence of the arrangements made for the said railways." (Note in full in: Lawton, *op. cit.*, Vol. II, p. 1354.)

obligation only under the conditions that the railroads built with capital provided by international syndicates should not be an evident menace to the security of the Russian frontier and should not injure the interests of Russia's railroad enterprise in Manchuria."

A counter proposal for the construction of a railway between Kalgan and Urga in Mongolia was presented, it being declared that the Russian Government had had this under consideration for some time and that this would be of much greater interest to Russia, an ultimate extension of the line from Urga to Kiakhta being also under contemplation. To this end, the Russian Government suggested that American finance be encouraged rather to participate in this railroad scheme along with the Russians.[33]

In reply to the Russian communication of February 24, the Department of State, under date of April 18, expressed regret that the Russian Government regarded these proposals for the introduction of a new plan of international finance and operation of Manchurian railways as injurious to their interests. American policy, declared the rejoinder, was merely a new expression of the traditional policy of observing the " open door " in Manchuria, as elsewhere in China.[34]

[33] *U. S. For. Rels.*, 1910, p. 262. This alternative was strongly urged upon the Chinese Government by Minister Korostovetz during March of 1910. (*Vide:* Lawton, *op. cit.*, Vol. II, pp. 1355 ff.) The Russian Government, however, insisted that the Urga-Kiakhta section should be reserved exclusively for Russian financing.

[34] *U. S. For. Rels.*, 1910, pp. 264-266.

"In view of this policy which has repeatedly been recognized and accepted by the Powers, the Government of the United States could scarcely be supposed in any way to commit itself to a recognition of exclusive rights of any Power within any portion of the Chinese Empire under agreements such as that of 1899 between Russia and China, referred to in the Memorandum of the Imperial Russian Government, even if it did not seem incontrovertible that these had been spontaneously superseded precisely by the terms of other subsequent treaty provisions on the part of Russia."

As for the Russian proposal inviting American capital participation in the Kalgan-Urga-Kiakhta project, the State Department expressed the view that this proposal was a hopeful sign of possible coöperation between the interests of the two states, but preferred to deal with the Chinchow-Aigun project first. As a step to this end, the United States was willing to exert influence at Peking to make possible the participation of Russian finance in the Chinchow-Aigun project, being inclined to favor the activity of Russian capital, especially in the northern sections of the proposed route to Aigun.[35]

From this account of the negotiations, as far as the Russian Government were concerned, it is quite

[35] *Ibidem*, p. 266. The Russian Government then sent surveyors into the territory of the proposed railway for the purpose of establishing a group of facts necessary to inform the government before it could give a final reply to the American proposals. In March, the Russian Minister at Peking declared to the Chinese Government that the report of the Russian railway experts showed clearly that the Chinchow-Aigun railway would take 5,000,000 rubles annually from the profits of the Chinese Eastern, and "will ruin the property which China has a right to regain after a period of twenty-nine years". (Lawton, *op. cit.*, Vol. II, p. 1356.)

evident that the State Department failed to conduct them in a manner to conciliate, at the outset, Russian opposition. The general principles of the Knox neutralization plan had been presented by Ambassador Rockhill as early as October and November, 1909, but not the details of the Anglo-American contract for the construction of the Chinchow-Aigun railway.[36] This railway, if built, would have crossed the Chinese Eastern at Tsitsihar, a consideration which required, at the outset, not only Russian approval but financial participation. The original contract, to be sure, did leave the way open for participation of Russian, or, for that matter, of Japanese finance, but the motives behind the negotiation of that contract by Willard Straight were such as hardly to encourage the approval of either.[37] After the Russian note of February 24, the Chinchow-Aigun project died a lingering death.

The foregoing discussion of the Russian opposition to the Chinchow-Aigun railway proposal furnishes evidence that, even had there been no particular opposition from Japan, this project was doomed to failure. These two governments, however, kept in constant and close communication on this

[36] The epitome of the contract sent to the Russian Government on February 26, 1910, reveals significant omissions. (*U. S. For. Rels.*, 1910, p. 262.) Overlach, *op. cit.*, pp. 209-210.

[37] Cf. Croly, *op. cit.*, pp. 311, 317, 328. Straight had, however, anticipated some support from the Russo-Asiatic Bank. A neutralization scheme seems to have been presented by him to Mr. Jacob Schiff, and he evidently realized the necessity of obtaining Russian official approval to the entire project.

subject between the autumn of 1909 and the summer of 1910. It is noticeable that the Russian and Japanese replies with respect to the Knox plan for neutralization were received by the American representatives at St. Petersburg and Tokyo on the same day, January 21, 1910. The Japanese press, as early as November, however, had generally opposed both the Knox plan and the Chinchow-Aigun project. The Japanese Government had been informed officially of the dual proposals on December 18.[38] On January 8, Ambassador O'Brien at Tokyo informed the State Department that Japan would likely oppose the proposals.[39]

The Japanese formal reply of January 21, 1910, was, therefore, quite as anticipated by the State Department as was the Russian. In the interval, Secretary Knox, by a telegram of January 20, had instructed Mr. O'Brien to re-emphasize certain features of the proposals, and call the attention of the Japanese Government to the wording of the Root-Takahira agreement of November, 1908, which bound both powers to respect the independence and integrity of China and the principle of equal opportunity for commerce and industry of all nations there.[40] There was an entire absence of reference to

[38] *U. S. For. Rels.*, 1910, p. 237.

[39] *Ibidem*, p. 245.

[40] *Ibidem*, p. 247. The substance of these instructions to Ambassador O'Brien was given to Count Komura, the Foreign Minister, on January 24. On March 3 Count Komura replied with an acknowledgment and an expression of regret that the Japanese vernacular press had bombastically criticized the Knox plan on the basis of

a cardinal feature of the same agreement which equally bound the two states to observe the *status quo*—applicable to Manchuria, as to any other part of the Pacific, at least in the Japanese interpretation at that time. This telegram was a most sincere effort to preclude an unfavorable reply from Japan: it stressed the advantages which might be expected to accrue to Japan with a concert of powers interested to maintain the peace in Manchuria.

The formal reply of Japan, dated January 21, 1910, however, left little room for doubt as to their opposition to the Knox neutralization plan itself. As to the Chinchow-Aigun proposal, on the other hand, definite reply was reserved, intimating that, while recognizing it in principle, it would be understood that Japanese financiers were to be permitted to participate.[41] The Japanese reply was couched in more considerate language than that of the Russian Government: it recognized the American proposal to be "disinterested" and to have been conceived for China's good. Japan reaffirmed adherence to the policy of respecting the administrative and territorial integrity of China and the principle of the "open door". The nature of the Knox neutralization proposal, however, required a frank reply, and this was given in the following manner:[42]

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garbled reports. These, he said, "had the excuse of ignorance", and did not reflect the attitude of the government. (*Ibidem*, p. 263.)

[41] *Ibidem*, p. 252.

[42] *Ibidem*, p. 251.

"The most serious objection to the proposal in question lies in the fact that it contemplates a very important departure from the terms of the treaty of Portsmouth. That treaty was designed to establish in Manchuria a permanent order of things, and the Imperial Government firmly believed that in a strict and loyal adhesion to its provisions are to be found the highest guarantees of enduring peace and repose in this part of the world and of the orderly advancement of Manchuria. Not the least difficult of the many difficult and important problems that were definitely solved at Portsmouth was the question of railways. That adjustment subsequently received the deliberate confirmation of the Chinese Government in the treaty of Peking, and the railway operations now carried on in southern Manchuria are consistent with the original concessions which were with equal deliberation granted by the same power."

Here followed a clause almost identical with one in the Russian reply of the same date: "Nor can the Imperial Government see in the present condition of things in Manchuria anything so exceptional as to make it necessary or desirable to set up there an exceptional system not required in other parts of China." China's "political rights" in Manchuria were declared to be unimpaired; and the "principle of equal opportunity possesses in its application to Manchuria a more comprehensive signification than it has elsewhere in China". The latter was evident, according to the Japanese reply, in the wording of Article 7 of the treaty of Portsmouth which obligated Russia and Japan to dedicate their railway holdings "exclusively to commercial and industrial uses". The specific neutralization plan of Secretary Knox

was opposed on the ground that the substitution of an international railway administration would not result in economy and efficiency, and was possessed of latent potentialities for political friction, while a system of divided responsibility would result in impairing the railway service in Manchuria. In concluding their reply, the Japanese note contained the following declaration:[48]

"In the regions affected by the Japanese railways in Manchuria there have grown numerous Japanese industrial and commercial undertakings which owed their inception, as they owe their continual existence, to the fact that the Imperial Government, possessing the railways in question, are able to extend to those enterprises and to the persons engaged in them due protection and defense against attack and pillage by lawless bands that still infest the country. In the development of these enterprises, which are contributing in such a marked degree to the prosperity and progress of Manchuria, a large number of Japanese subjects and large sums of Japanese money are enlisted, and the Imperial Government could not in good faith or with a due sense of responsibility consent to surrender the means by which such protection and defense are made possible."

During February to April, the American State Department seems to have concerned itself principally with an endeavor to obtain a reconsideration on the part of Russia, while Japan and Russia concentrated their diplomatic efforts principally on Peking. On January 31, Mr. Ijuin, the Japanese Minister, ad-

[48] *Ibidem*, p. 251. On January 21 Prince Ch'ing had informed *Chargé* Fletcher in Peking that, on the day before, the Chinchow-Aigun contract of October, 1909, had received the vermillion rescript: "Let it be as decided."

dressed a note to the Wai Wu Pu with a blunt statement to this effect: "Before the Chinese Government determines anything, the consent of my Government must first be obtained."[44] This was directed to the Chinchow-Aigun railway project, which was declared to be a matter which "must be considered with extreme caution". Mr. Ijuin's note then warned China that "if the position of my country is ignored, and a decision is made without referring the matter to my Government, it will be hard to estimate the seriousness of the trouble that may be caused in the relations of the two countries. I am therefore instructed to warn the Chinese Government that it must realise the necessity of caution."

In the meantime, The Russian Minister, Mr. Korostovetz, having French support, was urging upon China the alternative proposal for the Kalgan-Urga-Kiakhta railway. On February 14 the Japanese Government addressed a note to the Wai Wu Pu which shows more clearly than any communication to the American State Department their real attitude toward the Chinchow-Aigun railway project. It reveals that Japan did not contend that this railway was potentially a "parallel" or "competitive" line to the South Manchuria Railway. It gives evidence that Japan was willing to participate in financing such a railway, but only on condition that a branch line be constructed to connect it with her own

[44] Lawton, *op. cit.*, Vol. II, p. 1352. Text of the note. Willoughby, *op cit.*, Vol. I, pp. 185 ff.

railway system in southern Manchuria. Specifically, it asserted that " Japan will participate in the construction of the Chinchow-Aigun Railway by sharing in the loan, furnishing engineers and railway materials, and participating in the construction work," provided that it be connected to some point on the South Manchuria Railway.[45] It declared that the Japanese Government " overlooks the important consequence to the South Manchuria Railway which will be caused by the construction of the Chinchow-Aigun Railway ", and admitted that, " because the projected line . . . . is at a great distance from the South Manchuria Railway ", Japanese financial participation in the proposed main line had been approved by the government.[46]

Before venturing an appraisal of the reasons for the final failure of both the Knox plan for neutralization of the Manchurian railways and of the Chinchow-Aigun project, some note needs to be taken of the British Government's attitude. Recalling the cautious reply of Sir Edward Grey to the original Knox note of November 6, 1909, it is evident that, at the outset, the British Foreign Office was less inclined to support the claims of particular British financiers or contractors in Manchurian enterprises than in endeavoring to follow a program of placating Japan. Sir Edward Grey's foreign policy at this juncture was motivated largely by the complications

[45] Lawton, *op. cit.*, Vol. II, p. 1355.
[46] *Ibidem*, Vol. II, p. 1335.

of the European political situation. Conditioning British policy in the East was the Anglo-Japanese alliance of 1905, which had undertaken to bind the signatories to preserve their "common interests" in China. Sir Edward Grey was more inclined to consider this phase of the clause than its conclusion—"by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunities for the commerce and industry of all nations in China"—a phrase which most vitally concerned the interests of British traders and financiers in China.[47] Sir Edward Grey, therefore, replied at the outset to Secretary Knox, under date of November 25, 1909, to the effect that it was imperative "to persuade the Chinese Government to admit the Japanese to participation in the Chinchow-Aigun line".[48] It was thus apparent that British Foreign Office policy had not materially changed since it had refrained from supporting British private interests in the Hsinmintun-Fakumen project of 1907-08.

There was, however, considerable criticism of British Foreign Office policy at this juncture in the House of Commons. On April 27, 1910, a member

[47] It may be recalled that the alliance then existing was the second of a series of three which made Great Britain and Japan allies in the Far East during the period from 1902 to 1921. These were the alliances of January 30, 1902, of August 12, 1905, and of July 13, 1911. (Texts in MacMurray, Vol. I, pp. 324, 516, 900. *Vide: British Documents on the Origins of the Great War*, 1898-1914, Vol. IV, Ch. 24, pp. 120 ff. Young, *The International Relations of Manchuria*, pp. 33, 116, 240.)

[48] *U. S. For. Rels.*, 1910, p. 236.

inquired if the objections of Russia and Japan to the Knox proposals were not inconsistent with the Portsmouth treaty, and asked whether the Government would " give the same backing to the representative body acting for us as the other nations give to theirs ".[49] A member, replying for the Government, hedged on the issue by retorting that the action of the " representative body ", if by that term were meant a private banking group, was " entirely independent of His Majesty's Government ".

Major criticism, however, was expressed by Mr. Arbuthnot, M. P., in the House of Commons on June 15. He declared that " the impression prevailed that British interests in China were not being adequately supported by the Government ", and that the Government's answers to criticism of their action anent the Chinchow-Aigun project " were not satisfactory ".[50] It looked as though the British Government were giving more weight to Russian and Japanese opposition than to the British commercial interests involved. Mr. Arbuthnot denied that the Chinchow-Aigun project was of minor concern to the British commercial interests in China,[51] and

[49] *Parliamentary Debates,* 5th Series (1910), No. 17, pp. 425-426.

[50] *Ibidem,* pp. 1376 ff.

[51] Mr. Arbuthnot cited an article in the *Economist,* February 12, 1910, to the effect that the Chinchow-Aigun railway, if constructed, would adequately justify economically the financial investment involved. He made clear that this was no " concession ", in the sense that it involved " control " by either American or British interests, and explained that it was a purely private business undertaking, a

asked as to the alleged reason for British surrender in Manchuria, the Anglo-Russian agreement of 1899: "What in the world . . . . has that got to do with the Chinchow-Aigun Railway? China is granting concessions to nobody. There is not one penny piece of concession in it."[52]

As for the existence of any treaty commitments on the part of Great Britain precluding the British Government from supporting their nationals in such a private commercial enterprise, Mr. Arbuthnot asked whether the Anglo-Russian agreement of 1899 was not replaced by the effect of the treaty of Portsmouth and the Sino-Japanese treaty of Peking, both of 1905. If these agreements meant anything, he said, they provided a new basis for diplomacy in Manchuria inasmuch as the treaty of Portsmouth obligated Japan and Russia to use their railways for commercial, and not for political or military purposes, and not to impede such steps as China might wish to take to develop Manchuria commercially. Sir Edward Grey had said: "The principle of spheres of influence [*sic!*] regarding the railway concessions in China have never been formally repudiated."[53] Mr. Arbuthnot agreed that it had

financing and construction contract, and that upon completion of construction the line would be handed over to China. (*Parl. Debates, op. cit.*, p. 1378.)

[52] The Anglo-Russian agreement of 1899 textually referred only to the policy of the two governments in supporting "concessions" for railways in their respective spheres.

[53] *Parl. Debates, op. cit.*, p. 1379. Cf. Lawton, *op. cit.*, Vol. II, p. 1347.

not been *formally* renounced, but asserted that subsequent treaties, including those of 1905, had " very considerably modified " the conception.

To this criticism Sir Edward Grey replied that, although he looked with favor on Anglo-American financial coöperation in China, he could not press the Chinese Government to observe their contract because he was estopped by the 1899 agreement with Russia. Subsequent agreements had not modified that, nor " deprived it of its force ".[54] As for Japan's attitude, Sir Edward Grey said: " Japan has not opposed it in principle but has asked for participation, and I think that was a perfectly reasonable demand on the part of Japan." He therefore preferred to maintain an " attitude of neutrality ". Both Japan and Russia ought, he said, to be consulted. Parenthetically, it may be noted, that by this date, both had been fully and freely consulted, the British Foreign Office having agreed in December, 1909, to assist the American Government in urging the Chinese Government to permit their participation in the Chinchow-Aigun project.[55]

[54] *Parl. Debates, op. cit.*, p. 1388. The London *Times* report of this debate of June 15, 1910 (*Times*, June 16), as reprinted in *Foreign Relations of the United States*, 1910, pp. 268-269, is in error in that the second paragraph, attributed to Mr. Arbuthnot, which should have been attributed to Sir Edward Grey.

[55] Later, on July 21, 1910, Sir Joseph Walton—who had recently returned from a tour of China, and who had criticized Russian appropriation of the customs receipts at Newchwang before 1905—deplored, in the House of Commons, the lack of official support to British interests in the Chinchow-Aigun project. (*Parl. Debates*, 5th

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This somewhat lengthy discussion of the entire negotiations attending the Knox proposals of 1909-10 has been given in order that adequate testimony might be available for an appraisal of the problem of national rights involved in the matter. Full quotation and interpretation of the exchanges of official views of the governments concerned have been given. An appraisal of the result, therefore, is now possible. Our attention here, as elsewhere in this study, will be directed especially to the question of the validity of the claims of right, under the treaties and under

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Series (1910), No. 19, p. 1490.) Mr. Lancelot Lawton, who was intimately acquainted with Manchurian commerce and diplomacy at this time wrote in 1912 that "there is a good deal of truth in the contention of his [Sir Edward Grey's] critics that this policy re-establishes the principle of 'spheres of influence', the existence of which caused so many complications in the past". (Lawton, *op. cit.*, Vol. II, p. 1348.) Dr. Morrison and the unanimous opinion of the British trade organizations in China deplored the "policy of surrender" of the British Government at this juncture.

Mr. George Pauling, whose firm held the construction contract for the Chinchow-Aigun railway, negotiated in October, 1909, wrote as follows in an article in the London *Times*, July 23, 1914: "If it be true that no British railways, other than a short Peking-Mukden line, are now contemplated in the Japanese sphere of influence, it is true only because China's sovereign rights have been tacitly abrogated through a district as large as our Indian Empire, and because British subjects are no longer entitled to exercise therein their legitimate treaty rights or to claim protection for their legitimate interests and business." Professor A. M. Pooley, writing in 1919, tersely explained the policy of Sir Edward Grey anent the Knox plan and the Chinchow-Aigun project as follows: "In Europe Britain had to plan and later to fight for existence. Against this, local interests as railway concessions and the other *obiter dicta* of China's development could weigh as nothing in the balance." (*Japan's Foreign Policies*, p. 43.)

international law, which were at this juncture, asserted by the various powers.

The assertion and defense of American rights, under a perfectly valid and legally unimpeachable contract for construction of the Chinchow-Aigun railway were prejudiced by associating the subject with the contemporaneous proposal for neutralization of the entire Manchurian railway system, as well as by the initial unwisdom of the State Department in failing to begin the negotiations directly with Japan, in the first instance, and Russia, in the second. Confining our discussion, however, to the Knox neutralization proposal, it may be remarked that, however general in content the plan may have been when first presented, its defeat was due not to that fact, but rather to the fact that neither Russia nor Japan was willing to pool its interests in the Chinese Eastern Railway and the South Manchuria Railway, respectively, and by so doing substitute for national control—with all that that meant by way of strategic and commercial preference—a system of international administration. The Knox plan for neutralization of the Manchurian railways appears to have been conceived not only as a workable scheme to provide a practical safeguard against the possible outbreak of actual war over Manchurian questions,[56] but as a diplomatic device to test the value

[56] Mr. Lawton, an Englishman whose analysis of Manchurian diplomacy during this period was unusually well-balanced, wrote of Secretary Knox's purpose: "He was desirous of averting another great conflict of world-wide consequence, a conflict which would

of the adherences of Russia and Japan to the policy of permitting unimpaired freedom of commercial and capital competition for the good of China in Manchuria.[57] Only with regard to this last point was it successful: in 1910 it was evident that even Great Britain was inclined to support the Japanese and Russian emphasis on maintaining the *status quo* in such a manner as to permit them to decide arbitrarily any questions of alteration. It should be noted, however, that, as far as legal right was concerned, Japan and Russia were within their rights in rejecting the Knox plan as a matter of diplomatic policy. The reasons offered for rejection, however, particularly those of Japan in reference to the alleged violation of the treaty of Portsmouth, deserve to be scrutinized.

It may be sufficient to say with regard to the Russian position anent the Knox plan that the assertion that the Chinese Eastern Railway was a stra-

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of a certainty secure to the victor domination over the whole of Manchuria, and, in all probability, preponderating influence throughout the length and breadth of the Chinese Empire." (Lawton, *op. cit.*, Vol. II, p. 1324.)

[57] Mr. Lawton's judgment on this point is perhaps equally well-founded: "At the same time it was his immediate aim to see established in Manchuria the principle of equal opportunity." If Japan and Russia, he wrote, were sincere in their professions of adherence to the "open door" they could not reasonably object to international financial participation in the construction of the railways in Manchuria which are so important in determining the movement of trade. (p. 1324.) He sagaciously added, however, that Secretary Knox perhaps had in mind as his immediate object "to attract the serious attention of the world to the complicated situation existing in Manchuria". (p. 1333.) Cf. Overlach, *op. cit.*, pp. 209-210.

tegic, as well as a commercial railway, was an admission that Russia did not intend to be bound by the clauses of the original 1896 contract agreement which purported to give this line a pseudo-commercial character. It was the Knox neutralization proposal that revealed the existence of the claim of right which Russia traced to the 1899 pledge of China. It brought forth the reassertion of that right in 1910, when Russia reserved the right to examine every railway project " from a double standpoint of its political and strategical interests ".

Scrutinizing Japan's reasons, alleged for declining the neutralization proposal of Secretary Knox, it is quite evident, first, that the assertion that it was " a very important departure from the terms of the treaty of Portsmouth " was a diplomatic way of avoiding the legal issues actually involved.[58] Japan emphasized the necessity of a strict adherence to the terms of the Portsmouth treaty, alleging that that treaty, and the ratification of these transfers in the treaty of Peking, constituted a permanent solution of railway questions in Manchuria. These were, to be sure, instruments which disposed of particular legal rights. Japan was entitled, therefore, to assert that, as a matter of policy, she did not favor altering them. To allege, however, that a change in policy would constitute a violation of the treaty, in view especially of China's eagerness to have both the

[58] Cf. Clyde, P. H. *International Rivalries in Manchuria,* p. 141. Dr. Clyde accepts this official language at its face value.

Knox plan of neutralization and the Chinchow-Aigun project succeed, was an extreme assertion. On the other hand, it might reasonably be argued that the provision in the treaty of Portsmouth, contained in Article 4, to the effect that Russia and Japan would in future not obstruct " any general measures common to all countries, which China may take for the development of the commerce and industry of Manchuria ", was in itself violated by the policy of excluding American and British railway enterprise, of a purely private character, from Manchuria. The Japanese Foreign Office reply to the American Government reaffirmed adherence to the policy of equality of opportunity for commercial competition in Manchuria. If that principle meant anything, it applied alike to questions of competitive finance as to the relatively unimportant question of freight rebates, harbor dues and other trade discriminations. Whatever may have been the proper legal signification of the so-called " open door " policy as enunciated by John Hay in 1899, it must be quite obvious, for anyone who would take care to scrutinize the score of instances where the phrase " equality of opportunity " subsequently appeared in international correspondence pertaining to Manchuria, and before 1910, that, if these general statements of commitment to policy meant anything they should have precluded any government from pursuing a policy of monopolistic vetoing of foreign finance in any case where the Chinese Government requested such par-

ticipation, provided that specific prior options could not be adduced to contest particular claims.[59]

The Japanese intimation that Article 7 of the treaty of Portsmouth, by which Russia and Japan agreed to exploit their railways "exclusively for commercial and industrial purposes and in no wise for strategic purposes"—referred to by the Japanese Government to support the assertion that the "principle of equal opportunity possesses in its application to Manchuria a more comprehensive signification that it has elsewhere in China"—would be prejudiced by the adoption of the neutralization plan, was but a diplomatic device for concealing the very fact of its circumvention through retaining the *status quo*.[60] The added assertion that Japan possessed in the South Manchuria Railway large vested interests which might better be defended, as a matter of state policy, under the then existing Japanese con-

[59] Dr. Stanley K. Hornbeck, in an address made in 1917, gave as the reasons for the failure of the Knox neutralization plan the following: "The United States was unable to put through the neutralization scheme, for three reasons: We had not sufficient economic anchorage in the region concerned; we had no intention of using or threatening to use force; we were left in the lurch diplomatically in quarters where we had been led to believe we would have support." (Address delivered at the National Conference on Foreign Relations of the United States, Long Beach, N. Y., June 1, 1917. *Proceedings of the Academy of Political Science*, N. Y., Vol. VII (1917-18), p. 613.) At about the same time he wrote: "What, at bottom is the principle of the open door and equal opportunity? Does it not imply, is it not practically synonymous with, the idea of commercial neutralization?" (*Contemporary Politics in the Far East*, p. 261.)

[60] Cf. Kawakami, K. K. *American-Japanese Relations*, p. 72.

trol, was more tenable. This also may well be regarded as a question of policy.

Aside from the oblique interpretation of the treaty of Portsmouth, therefore, the Japanese Government were within their legal rights in rejecting the Knox neutralization proposal. They quite correctly—in fact, more clearly than any other government—preferred to draw a sharp line between the Knox plan for neutralization of all Manchurian railways and the specific Chinchow-Aigun project. It is this latter with which we now have to deal.

Reverting to the Russian official attitude it is quite evident that it was Russia, more influentially than Japan, which caused the Chinese Government to refrain from going ahead with construction under the terms of the Anglo-American contract of October, 1909. Russia, on the other hand, had more justice for opposing it: the line was actually to cross the Chinese Eastern Railway at Tsitsihar, and, if the evidence produced by the Russian Government, to the effect that this new line would deprive the Chinese Eastern of large traffic revenues, were somewhat doubtful at the time, it is more acceptable today since such a line has actually been constructed through Tsitsihar and a considerable distance toward Aigun.[61] The equities of the case were one thing; the legal rights claimed were another. Russia

[61] This is the independent Chinese railway, called the Tsitsihar-Koshan line, which in 1929 turned north to Mergen, with a purpose of eventual construction to Aigun.

relied on the 1899 pledge of China and asserted that the Russian Government reserved the right to examine any project for railway construction in North Manchuria " from a double standpoint of its political and strategical interests and of the interests of the Chinese Eastern Railroad ". This was an assertion of a monopolistic right, which, however justifiable under the Russo-Chinese agreement of 1899, was, nevertheless, a claim of exclusive rights contrary to the declared policy of the Russian Government with regard to the " open door " for foreign capitalistic enterprise in Manchuria. It was a claim which was definitely criticized by the American Government in their reply of April 18, 1910.

The equities of the situation required that at least Russian finance should have been permitted to participate in the Chinchow-Aigun project. Neither the Russian nor the Japanese claim to participation was opposed by the American Government. The State Department particularly proposed that Russian finance should be utilized in the Tsitsihar-Aigun section. Both the United States and Great Britain made an effort in Peking to secure Chinese consent to such a proposition. Russia, however, was less interested in participation than in placing obstacles in the way of the entire scheme, and consequently proposed the Kalgan-Kiakhta railway, via Urga, as an alternative. Inasmuch as the Russian Government were at this time supporting the autonomy of Mongolia, it is evident that China could have conceded that request

only under pressure. This proposal, and the influences brought to bear at Peking, especially during February, 1910, would have made the construction of the Chinchow-Aigun railway with American capital an impractical proposition.

Turning to the Japanese attitude toward the Chinchow-Aigun railway it is evident that Japanese opposition was neither as direct, nor on the same grounds, as their former opposition to the Hsinmintun-Fakumen project in 1907-08. At no time did the Japanese Government communicate to the United States Government a specific objection to the Chinchow-Aigun railway. Their objections were rather manifested in Peking, as evidenced by Minister Ijuin's warning to the Chinese Government on January 31, 1910, that " before the Chinese Government determines anything, the consent of my Government must first be obtained ". Japan did not, however, claim that the proposed line was " parallel " or " competitive " to the South Manchuria Railway.[62] They sought Japanese participation in financing the construction of a proposed railway to connect the new line with the South Manchuria Railway, but

[62] There may be some room for disagreement here, inasmuch as *Chargé* Fletcher at Peking communicated to the State Department under date of February 7, 1910, that he had gathered from Chinese officials that Japanese opposition was manifested in Peking on the ground that such a line would parallel the South Manchuria Railway. For this assertion, however, he did not give detailed evidence. Fletcher noted that, in speaking with Mr. Ijuin, the latter made clear that " Japan did not intend to oppose the line, but merely wished to have more details ". (*U. S. For. Rels.*, 1910, p. 257.)

under conditions, including the employment of Japanese engineers and measures of "control", which the Chinese Government considered exorbitant.[63] China had no other alternative but to consider the combined Russian and Japanese warnings that "serious trouble" might follow if independent action were taken as factors counselling the government to refrain from carrying out the Chinchow-Aigun contract with the American and British interests.

Thus, turning our attention again to the claims of the Japanese Government to monopolistic railway rights in South Manchuria, one would seem justified in drawing the following conclusions. Between 1905 and 1910 the Japanese Government pursued a policy which, reënforced by Russian support, successfully prevented American and British financing interests from participating in the construction of any single railway in Manchuria. The Japanese official claims to the right to veto the construction of any railway in Manchuria which might be considered "in the neighborhood of, or parallel to" the South Manchuria Railway defeated the Hsinmintun-Fakumen project, which was a British-financed enterprise. Japan's claim of right to be "consulted" by the Chinese Government with regard to *any* railway construction in South Manchuria contributed to the failure of the Knox plan and the Chinchow-Aigun project. The Japanese Government placed major

[63] Cf. Lawton, *op. cit.*, Vol. II, p. 1335.

emphasis upon the maintenance of the *status quo* as established in 1905. Japan interpreted this to mean that the pledge, contained in the treaty of Portsmouth, not to obstruct free capital competition in the matter of railway finance in Manchuria, was subordinate, if not entirely without practical significance. Opposition to the Knox neutralization plan itself may have been justified by the dictates of national policy, but covert opposition to the Chinchow-Aigun project was but a manifestation of a policy of monopoly.[64]

It is, of course, a well-known fact that the Russo-Japanese open convention and secret treaty of July 4, 1910—the date is said to have been appropriately selected—which two documents renewed the previous agreements of 1907, redefined their respective "spheres of railway interest" in Manchuria, and provided for full and free consultation "on all matters concerning their special interests in Manchuria", were a direct product of their joint opposition to the Knox neutralization plan.[65] It may be added, to clarify the American interpretation of their reserved rights under the Chinchow-Aigun railway contract of October 2, 1909, that, when the Russo-Asiatic Bank signed with the Chinese Govern-

[64] "The Chinchow-Aigun railway project was a legitimate business proposition—for the advantage of China along with that of the concessionaires. It involved the co-operation of American capital, English engineers, and Chinese administration and ownership." (Dr. Stanley K. Hornbeck, in the address cited above: *Proceedings*, p. 613.)

[65] Texts in: Young, *The International Relations of Manchuria*, pp. 121-122. *Vide:* Chapter II of the present volume.

ment on March 27, 1916, an agreement for the construction of a projected railway from Harbin to Heihofu, on the Amur river near Aigun (Pin-Hei railway), the United States Government made a declaration of their reservation of rights under the contract of the American banking group of 1909.[66]

[66] *U. S. For. Rels.*, 1916, p. 189. The American banking group involved also made a statement to the State Department that "they have never formally relinquished such rights as they may have under the arrangements with the Chinese Government", i. e., the contract of October 2, 1909. This agreement had been replaced by a final and detailed agreement of April 26, 1910. (*Ibid.*, p. 169.) The contract has not been implemented, however, by an actual loan or by any railway construction.

CHAPTER VI

JAPAN'S CLAIMS TO SPECIAL INTERESTS IN MANCHURIA: 1910-1915

1. Reservations to Early Consortium Operations in Manchuria. A prelude to the reservations which the Japanese financial groups, supported by their government, sought to make to the loan operations of the International Banking Consortium in 1918-20 may be found in the negotiations which transformed the so-called "Four-Power Consortium" into the "Six-Power Consortium" in 1911-12. In order to place the development of that crucial period of Chinese history, the days of the Revolution, in proper perspective it is essential to recall the independent attempts of the Chinese and local Manchurian authorities to obtain loans in the United States for public works, banking and colonization development in Manchuria, during the period from 1907 to 1911.

In the summer of 1907 the Chinese Government requested the late Mr. E. H. Harriman to undertake a Manchurian loan of $20,000,000.[1] Owing to the financial panic of 1907, however, Mr. Harriman was forced to drop the matter for the time being. Harriman still remained interested in the possibility of purchasing the Chinese Eastern and the South Man-

[1] Croly, *op. cit.*, p. 242. Willard Straight, "The Politics of Chinese Finance", p. 5. (An address delivered at the dinner of the East Asiatic Society of Boston, May 2, 1913.) N. Y., 1913.

churia Railways. In the interval the Japanese Government manifested their opposition to the Hsinmintun-Fakumen railway project, which had been proposed by a British group. In March, 1908, the Viceroy of Manchuria called a conference of the governors of the Three Eastern Provinces at Mukden which endorsed T'ang Shao-yi's plan for the flotation of a Manchurian loan, Consul-General Willard Straight reporting the result to the State Department on March 10.[2] In pursuance of this decision T'ang Shao-yi went on mission to the United States, ostensibly to return thanks for the American generosity in remitting their share of the Boxer indemnity, but actually for the purpose of concluding this loan.[3] On August 11, 1908, T'ang presented this proposal to Mr. Elihu Root, the Secretary of State, who had the matter referred to Kuhn, Loeb and Company, Mr. Harriman's bankers. T'ang Shao-yi sought a loan of $300,000,000, emphasizing his desire for American leadership, but agreeing to the participation of other foreign banking groups.[4] In December, 1908, T'ang Shao-yi proposed to the Secretary of State that China float a loan through American capitalists for meeting expenses incident to currency reform in China and the abolition of likin. These proposals were also presented to Messrs. Kuhn, Loeb and Company, who accepted

[2] Croly, *op. cit.*, pp. 255, 266, 269.
[3] *Ibidem*, p. 255. "The Politics of Chinese Finance", p. 5.
[4] *Ibidem. U. S. For. Rels.*, 1912, p. 88.

them.[5] Owing, however, to the political situation in China which had seriously prejudiced the position of Yuan Shih-k'ai, from whom T'ang Shao-yi had received his credentials, these loan negotiations were postponed.[6]

During 1908-09 British, French and German banking groups also had taken an interest in Manchurian loans. Willard Straight, while American consul-general at Mukden, had lent his support to a combination of foreign bankers which might assist in furnishing funds for much-needed administrative reform and development in Manchuria,[7] and on November 8, 1908, the Viceroy of Manchuria had concluded a separate loan agreement with the Hongkong and Shanghai Banking Corporation and its French and German colleagues for a loan of $1,100,000.[8] But, as a matter of fact, this Manchurian project was absorbed in the negotiations of 1909 in which British, French and German bankers agreed to pool their financing facilities for general loans to China.[9] President Taft, as indicated by his message to Congress of December 7, 1909, had strongly urged the

[5] *U. S. For. Rels.*, 1912, p. 88. Croly, *op. cit.*, p. 272.

[6] Croly, *op. cit.*, p. 272. *U. S. For. Rels.* 1912, p. 88. Secretary Root was at this time negotiating the Root-Takahira agreement.

[7] Croly, *op. cit.*, p. 246.

[8] *U. S. For. Rels.*, 1912, p. 88.

[9] On July 6, 1909, these bankers signed certain agreements in London, providing for independent participation of their bankers, but under conditions enabling the bonds to be floated by others not signatories. (*U. S. For. Rels.*, 1912, p. 88.) These bankers were primarily interested in the Hukuang railway loan negotiations and in the currency reform loan for China proper.

formation of an American banking syndicate to undertake Chinese loans, and this combined interest of European and American bankers led to the inclusion of the latter in the so-called " Four-Power Banking Group " in 1910.[10]

After the issuance of the Chinese Government's edict establishing a uniform monetary standard on the basis of the Mexican silver dollar, on May 24, 1910, the Manchurian loan propositions became involved in the plan for loans for general currency reform in China, and from this time on the so-called " Manchurian Industrial Development Loan " was considered as a part of the currency loan.[11] This dual proposition had been initiated by the Chinese Government, a preliminary loan agreement having been signed with an American banking group on October 27, 1910.[12] Although the Chinese Government were strongly in favor of independent American participation, at the instance of the American Government, the British, French and German financial groups also came to be included, a combined loan agreement for Chinese currency reform and Manchurian industrial development being signed on April 15, 1911.[13]

[10] *Ibidem,* p. 92.

[11] *Ibidem,* pp. 88, 90, 92.

[12] MacMurray, Vol. I, p. 851.

[13] *Ibidem,* p. 841; *China Year Book,* 1912, p. 288; *U. S. For. Rels.,* 1912, pp. 95 ff. Each of these references gives the text. The banks, representing the four separate powers, were the following: Banque de l'Indo-Chine (French): Deutsch-Asiatische Bank (German); Hongkong and Shanghai Banking Corporation, Ltd., (British), and

It should be noted that, due to the insistence of the American Government that the Manchurian loan be included as a part of the general currency loan, on the principle that a loan for Manchuria "should not be treated differently from one for the rest of China", the four-power banking agreement of 1911 did not propose to deal with Manchuria as a separate administrative unit.[14] Moreover, in spite of China's wish that the American financiers float this loan themselves, the State Department finally obtained China's consent to the inclusion of the other three banking groups mentioned. Nor was this principle

an American group, including Messrs. J. P. Morgan and Company, Messrs. Kuhn, Loeb and Company, the First National Bank, and the National City Bank of New York. The currency reform features of the agreement need not concern us here, though it may be mentioned that they provided for a loan not to exceed £10,000,000 at 5%, the bonds to be sold at 95. Of this amount a possible £1,000,000 was to be reserved for "the promotion and extension of industrial enterprises in the three Manchurian provinces", the same, when advanced, to be kept in a separate "Manchurian development account". The entire loan was to be secured by and made a charge upon revenues of the Chinese Government, one half of which was designated as derivable from Manchuria (i. e., 2,500,000 Kuping taels annually), from tobacco and spirits taxes, production and consumption taxes. The Manchurian portion of the loan was to be used for promotion of immigration, reclamation and agricultural enterprises, as well as for forestry and mining in connection with the establishment of branch mints in Manchuria. Apparently, the sum of £400,000 was actually advanced to the Chinese Government for use in Manchuria. (MacMurray, Vol. I, p. 850; Willoughby, *op. cit.*, Vol. II, p. 988.) This is the only exception to the statement, here made, that no international loan has ever been advanced for general industrial purposes in Manchuria.

[14] *U. S. For. Rels.*, 1912, p. 90. *Vide:* Willard Straight, "China's Loan Negotiations," in Clark University Addresses, 1912. pp. 134 ff.

to be exclusive of Japanese and Russian interests, in case they wished to participate on a basis of equality with those of the four-power group already formed.[15]

At this juncture the Japanese and Russian governments pressed various foreign offices for admission of their financiers into the four-power group for financing loan operations in China. Japanese interest was principally in the Manchurian allotment of the combined currency reform and Manchurian industrial development loan agreement, and, to secure participation on the basis of their claims, the Japanese Government conferred freely with the Russian Government.[16] France supported Russian claims to participation. In order to assure the Japanese Government of the American attitude on this question Secretary Knox sent the following instructions to Ambassador O'Brien at Tokyo on May 24, 1911:[17]

"You may at your discretion make public a statement to the effect that the Governments having important commercial relations with China were early notified [October 31, 1910] of the general features of the currency loan and their support of the enterprises was invited. This notification and invitation included Japan and Russia. As the reform is one in which all the leading powers are alike interested, the United States has steadily favored the widest possible international participation both in the loan and in the reform. The finan-

[15] *U. S. For. Rels.*, 1912, p. 93.
[16] *Ibidem*, p. 96.
[17] *Ibidem*, p. 97.

cial details are, however, properly subject to the decision of the bankers concerned."

It was made clear, moreover, that the proposed loans for Manchuria did not include railway loans. Fearing, however, that Article 16 of the four-power agreement of April 15, 1911, constituted a provision whereby the participating banking groups would be given a preference in loan operations, especially in Manchuria, the Japanese Government, on June 25, 1911, presented a *note verbale* to the French Government, in which Japan asserted that this article was interpreted to mean that " in the whole of the three Manchurian provinces the four powers' financial group is accorded priority over all other foreigners and foreign institutions, not only as regards enterprises contemplated by the agreement, but in the matter of any other activities which may hereafter be associated with such enterprises ". It was on this occasion that the Japanese Government made the following assertion:[18]

"Japan possesses in the region of southern Manchuria special rights and interests, and while she is fully prepared in the future as in the past to respect the rights of others, she is unable to view with indifference measures which tend not only to menace those special rights and interests but to place her subjects and institutions at a disadvantage as compared with the subjects and institutions of any other country."

Japan, therefore, urged suppression of Article 16 of the 1911 four-power loan agreement. A similar protest was sent to the British Government. The

[18] *Ibidem*, pp. 99-100.

Russian Government, likewise, objected to the same article, asserting that " it seems that the syndicate pretends to a monopoly of financial and industrial enterprises in the region in which Russia possesses important special interests ".[19]

Again, on February 1, 1911, Secretary Knox stated that " should the Chinese Government hereafter conclude a loan with the four groups we would be disposed to favor the admission of other powers concerned, particularly Japan and Russia ".[20] Japan and Russia, however, when offered equal participation in these loan operations, persistently contended that Manchurian revenues should not be hypothecated by this international banking group, even though it had been made clear that the Manchurian allotment of the loan should be but a part of the general currency loan for all of China. During the months which followed, the Chinese Revolution had broken out in the Yangtze valley; there was a danger of independent action by one or another power, especially in Mongolia and Manchuria; and, as a result, these negotiations were postponed until 1912.

During May, 1912, a conference looking toward an international agreement was held in London, but it

[19] *Ibidem,* p. 100. Prince N. Koudacheff, Russian *Chargé d'Affaires,* to the Secretary of State, July 11, 1911.

[20] *Ibidem,* p. 109. Secretary Knox to Sir Edward Grey, February 1, 1912. " Japan and Russia were ultimately admitted to the loaning group because it was conceived by the governments already committed to the principle of common action that it would be best to avoid the hidden conflict of interests which refusal to admit them would involve." (Dr. S. K. Hornbeck, in: *Proceedings of the Academy of Political Science,* Vol. VII [1917-18], p. 614.)

was suspended due to the insistence of the Russian and Japanese groups that they be permitted, as a condition of participation in the consortium group, to issue abroad through any agencies they themselves should select, not necessarily through the consortium banking groups, such bonds as were guaranteed on Manchurian revenues. The Japanese group desired a declaration from all the banking groups that the proceeds of such a reorganization loan would not be expended in Manchuria and Mongolia.[21] As a matter of fact, as the communications between the British and American governments at this juncture give evidence, there was an effort on the part of Japan to obtain a general declaration from the banking groups which would make the consortium practically inoperative in Manchuria.[22]

These negotiations, then, were transferred to Paris. In early June, 1912, the Russian and Japanese banking groups indicated their willingness to enter into the proposed six-power consortium, and to sign a Chinese reorganization loan agreement, on condition that the minutes of the conference include a declaration as follows:[23]

[21] *U. S. For. Rels.*, 1912, p. 130.

[22] Sir Edward Grey was inclined to admit these claims, and wanted merely a formal declaration of affirmation of the open door policy. (*Ibidem*, p. 136.)

[23] *Ibidem*, p. 137. The other banking groups replied to this proposed reservation that they were not in a position to express their views upon this declaration on the ground that they were not competent to deal with political questions.

"The Russian group declared that it takes part in the loan on the understanding that nothing connected with the projected loan should operate to the prejudice of the special rights and interests of Russia in the regions of northern Manchuria, Mongolia, and western China, and the Japanese bank declared that it takes part in the loan on the understanding that nothing connected with the projected loan should operate to the prejudice of the special rights and interests of Japan in the regions of South Manchuria and of the eastern portion of inner Mongolia adjacent to South Manchuria."

This specific wording was not included in the minutes, however, as finally arranged. In its place, a modified declaration was incorporated in the minutes of the conference, June 19, 1912. It included the assertion that either the Japanese or Russian groups might withdraw in case—after disapproval of any loan by one of them, and the consortium, nevertheless saw fit to advance such a loan—either of their governments should notify the other governments concerned that "the business proposed is contrary to the interests of Russia or Japan".[24]

The Chinese Government, however, rejected the proposed reorganization loan for the reason that it

[24] *Ibidem*, p. 140. MacMurray, Vol. II, p. 1024. The six-power financial group had signed the Chinese reorganization loan agreement on June 18, Japanese and Russian bankers being included. (MacMurray, Vol. II, pp. 1021 ff.) On June 20, at the Paris bankers' conference the various banking groups, other than the Japanese and Russian, had accepted the reservation incorporated by the Japanese and Russian groups in the minutes of the conference of the previous day, but with the understanding that "the same right of withdrawal *mutatis mutandis* is reserved to the British, German, French, and American Groups". (MacMurray, Vol. II, p. 1024.)

had become a means whereby several ministers at Peking sought to dictate the appointment of financial advisers and otherwise obtain effective means of "control" over Chinese revenue administration.[25] Here was a clear case of the clash of arguments, each of which had considerable to justify it: China objected to foreign supervision of revenue administration; the foreign bankers insisted that without it there could be no assurance of security for the requested loan, nor for the use of the funds, once supplied, for purposes for which they were borrowed. This situation obstructed any possible resort to the consortium to obtain the much-needed reor-

[25] *Vide:* Hornbeck, S. K. *Contemporary Politics in the Far East,* pp. 391 ff. *U. S. For. Rels.,* 1912, p. 144. Minister Calhoun to the Secretary of State, July 2, 1912. The conditions for the £10,000,000 loan which the Chinese Government at this time sought were regarded by China as entirely too onerous. These conditions were: the control of the amount of the indebtedness that China might contract, in order to avoid financial improvidence and national bankruptcy; the reform of the administration of the revenue pledged as security for the proposed loan, so as to make it adequate for the purpose; and the supervision of the expenditure of the loan proceeds, in order to avoid appropriating them for extraneous purposes, to eliminate waste and to forestall private dipping into the government treasury. "These ends," said Minister Calhoun "are in the interest of the Chinese people and serve to promote and preserve their national integrity." (*Ibidem,* pp. 157-158.) The Chinese, on the other hand, insisted on no such control, no careful supervision by the foreign bankers' representatives, no auditing or accounting under foreign control. As a result, the Chinese Government broke off negotiations with the Six-Power Consortium group and began negotiations with private banking groups of several nationalities not included in the consortium. (Cf. Straight, "China's Loan Negotiations," *op. cit.,* pp. 142 ff; Overlach, *Foreign Financial Control in China,* p. 251.)

ganization loan, as well as funds necessary for industrial enterprises in Manchuria.

Out of this situation came the eventual withdrawal of American official support from their bankers in the Six-Power Consortium in 1913. The Taft administration had given way to the Wilson administration on March 4, 1913. In the interval, during the closing months of 1912 and the opening of 1913, various ministers of foreign governments at Peking had insisted on preferential claims to nomination of financial advisers to the Chinese Government in connection with any proposed loan of the consortium.[26] By February a situation had developed—so strong was the competition for national representation in various advisory and control posts—which impelled Minister Calhoun to report to the State Department that "we are confronted with a situation wherein we must join or go out of the consortium".[27] Under these circumstances, President Wilson preferred to "go out of the consortium".

[26] France, particularly, made a demand for six such advisers, and, in this, was supported by Russia. Ambassador Herrick at Paris telegraphed that "the real cause of the refusal, I believe, is Russia". (*U. S. For. Rels.*, 1913, p. 150.) It is evident, however, that Russia insisted on her own appointees, Secretary Knox telegraphing to the American Minister at Peking that "the Russian demand seems untimely and unreasonable". (*Ibid.*, p. 151.) The American Ambassador at Berlin telegraphed that, "Russia, with a view to furthering her own political plans, is no doubt responsible for existing complications and would doubtless be pleased to see sextuple group disrupted as she fears money may be used to strengthen China's position in Mongolia". (*Ibid.*, p. 156.) Cf. Croly, *op. cit.*, pp. 428 ff.

[27] *U. S. For. Rels.*, 1913, p. 160.

On March 5—the very day after the presidential inauguration— Willard Straight, the representative of the American banking group in the consortium, addressed to the Secretary of State a letter in which he recalled that the group had " entered originally at the request of the Department of State ", and now wished the new administration's judgment as to future activity.[28]

President Wilson's unhesitating withdrawal of official support from the American banking group was a manifestation of his opposition to the policy of " dollar diplomacy "—if by that term is meant the imposition of onerous terms on a foreign country which would impair its administrative integrity. On March 18, he issued a statement to the press, " a declaration of the policy of the United States with regard to China ", which plainly stated, with respect to the proposed reorganization loan, that " the conditions of the loan seem to us to touch very nearly the administrative independence of China itself, and this administration does not feel that it ought, even by implication, to be a party to those conditions ".[29] These conditions had meant both hypothecation of particular taxes, some of them antiquated and burdensome, and the requirement of foreign supervision: " Our interests are those of the open door—a door of friendship and mutual advantage. This is the only door we care to enter." Immediately,

[28] *Ibidem*, p. 167.
[29] *Ibidem*, p. 170.

the American banking group announced its withdrawal.[30]

From this résumé of the attempts of international banking groups to offer loans to China for various purposes, but including specific allotments for Manchurian purposes, excluding railway loans, it is apparent that these were constantly impeded, between 1910 and 1913, by the insistence of the Japanese and Russian financial groups, with the support of their governments, that Manchuria be, in effect, excluded from the loan operation of such multi-power banking institutions. Particularly did the negotiations attending the formation of the Six-Power Consortium in 1912 give evidence of the claims of the Japanese and Russian governments to "special rights and interests" in designated portions of Manchuria and Mongolia. It was, however, the political disorder in China, and the controversy over appointments of

[30] The group retained a one-fourth share, however, in the advance of £400,000 already made under the Four-Power Consortium, on May 23, 1911. This advance had been made under the combined currency reform and Manchurian industrial development loan agreement, which thus was partially applicable to Manchuria. (*Ibidem*, pp. 192 ff.) For a while, the consortium continued as the "Five-Power Group", signing in April 1913, a reorganization loan agreement with the Chinese Government, but independent German and Japanese firms soon made loans to the Chinese Government, thus breaking the concert of financiers. Russia and Japan had no large idle funds to pool in any consortium arrangement, and their withdrawal subsequently paved the way for so-called "political loans", especially as regards Manchuria. (*Vide: Hornbeck, op. cit.*, p. 395.)

foreign supervisers, which prevented an actual test of the character of these reservations *vis-à-vis* Manchuria.

The Great War broke in 1914, and with it came a new orientation to loan finance in China. Consequently, the period from 1915 to 1918 was one in which only the Japanese financiers, with the support of their government, took an active part in independent loans, both to the central Chinese Government and to the local governments in the Manchurian provinces.

2. The Sino-Japanese Agreements of 1915. The years 1915 to 1919 mark the limits of a short period during which the efforts of Japan to commit China to a recognition of a highly monopolistic sphere of interest for Japanese in Manchuria were more aggressive than at any previous period. The historic " Twenty-one Demands ", their original character, their subsequent amendment, the final Japanese ultimatum of May 7, 1915, the resulting treaties and notes of May 25, are all matters of general knowledge, which are of concern to us here only so far as they relate specifically to Japan's attempts to secure a broader recognition of an exclusive sphere of interest in Manchuria. The several Sino-Japanese railway agreements which followed were, in the main, but supplementary to the legal grants obtained by Japan in the Sino-Japanese treaties and ex-

changes of notes of May 25, 1915, relating to "South Manchuria" and "Eastern Inner Mongolia".[31]

In the original proposals, in the form of twenty-one specific demands upon the Chinese Government, submitted by the late Mr. Hioki, Japanese Minister in Peking, on January 18, 1915, Japan sought commitments from China which were much more far-reaching, and more of a nature to establish a recognition of an exclusive political sphere of interest—very near to a sphere of influence—than were finally conceded. In Baron Kato's instructions to Minister Hioki, December 3, 1914, the purpose of the demands pertaining to Manchuria were stated: "The second group has for its chief aim the defining of Japan's position in South Manchuria and Eastern Inner Mongolia, that is to say, securing at this time from the Chinese Government full recognition of Japan's natural position in these regions."[32] To this end the original Japanese demands, presented on January 18, 1915, referred in Group II to the "predominant position of Japan in South Manchuria and Eastern Inner Mongolia" which was stated to have been recognized by China.[33] There existed, in fact, no specific legal commitment on the part of the Chinese Government to justify such a claim. In fact, the Chinese negotiators insisted on a revision of that phrase

[31] For a classification and analysis of these several railway and industrial loan and construction agreements see: Young, *The International Relations of Manchuria*, pp. 139 ff.

[32] *The Sino-Japanese Negotiations of 1915*, p. 1.

[33] *Ibid.*, pp. 3-4. The English version of the Chinese text reads "special position", for "predominant position".

to substitute " economic relations " for " predominant position " or " special position ".[34] Consequently, in the revised list of demands presented to China on April 25, the expression " predominant position " was stricken out and the purpose for requiring China's acceptance of the articles in Group II, all of which pertained to Manchuria, was simply stated as intended to develop the " economic relations " of the two countries in South Manchuria. The intentions of the Japanese Government, however, are better discovered by analysis of their demands and the resulting agreements than by attention to a general preamble, unenforceable in law.

To further consolidate their political and economic position in South Manchuria, and to secure Chinese official recognition of Japanese claims, the original demands pertaining to Manchuria, required China's consent to the following:

1. Extension of the term of the lease of the Liaotung peninsula, of the period for Japanese possession of the South Manchuria Railway, and also of the Antung-Mukden railway, to ninety-nine years.

2. Cancellation of joint control of the Kirin-Changchun railway and extension of the period of exclusive Japanese control to ninety-nine years.

3. The exclusive right for the Japanese Government to be consulted in any case where foreign capital was to be required in future for the construction of railways in either South Manchuria or Eastern Inner Mongolia; together with the ex-

[34] Official statement by the Chinese Government, May 7, 1915. (*Ibid.*, p. 74.)

clusive right for the Japanese Government to offer loans on the security of local taxes in these areas.

4. Japanese subjects to be granted rights in mining projects in these areas, exclusive of other foreign nationals.

5. Japanese subjects to be permitted to *own* (in freehold) land, as well as to lease land, in these areas; together with the right to enter, reside and travel in the interior, that is, outside the so-called " open ports ".

6. Finally, that Japanese advisers or instructors, political, financial and military, be employed whenever such were needed in these areas.[35]

During the course of the protracted negotiations, however, the Chinese negotiators succeeded in securing a withdrawal of certain of the more obnoxious of these demands, notably, that Japanese be permitted the right to *own* land in freehold. The extension of the Kwantung (Liaotung) lease was conceded, as also the term for possession of the South Manchuria Railway,[36] but China did not concede a similar extension of the period of Japanese control of the Kirin-Changchun railway. The Chinese declared in their official explanation of their position that " the demand with reference to mining in South Manchuria tended to create a monopoly for Japanese subjects, and, therefore, was entirely inconsistent with the principle of equal opportunity ".[37] As for the revised demand with respect to the Kirin-Chang-

[35] *Ibidem*, pp. 4-5.

[36] The subject of the international legal validity of these agreements is discussed at length in the author's volume: *The International Legal Status of the Kwantung Leased Territory*, Ch. VIII.

[37] The Sino-Japanese Negotiations of 1915, p.69.

chun railway, the Chinese statement explained that the new loan agreement proposed by Japan abolished the equally divided capital interest of the two countries and substituted " full control and administration of the railway " by the Japanese. The proposal for joint administration by China and Japan of the police in China, as contained in Group V of the demands " was clearly an interference with the Republic's domestic affairs ", and an infringement upon China's sovereignty. When, however, the Japanese negotiators explained that this demand applied only to South Manchuria, the Chinese agreed to engage Japanese as police advisers there.[38]

But, of the various objections of the Chinese, the first mentioned, that respecting ownership of land in the interior was perhaps most strongly urged. " Japan's unconditional demand for the privilege of inland residence " was characterized in the Chinese official explanation of their position as an effort " to enable Japanese subjects to monopolize all the interests in South Manchuria " and was as such " palpably irreconcilable with the principle of equal opportunity ".[39] Such could not be conceded without placing Japanese nationals under at least as much police and court jurisdiction as was exercised under special agreements pertaining to Koreans in South Manchuria. Certain of these objections were accepted by the Japanese negotiators. Counter demands were, in some cases, substituted. The Jap-

[38] *Ibidem*, p. 70.
[39] *Ibidem*, p. 70.

anese ultimatum, which brought about a conclusion of the negotiations, was obviously phrased so as to obtain China's consent to commitments of great significance elsewhere in China, but extraneous to Manchuria.

What the Japanese Government obtained, finally, in the Sino-Japanese treaties and exchanges of notes of May 25, 1915, pertaining to South Manchuria and Eastern Inner Mongolia may be summarized as follows:

1. The extension to ninety-nine years of the periods of the lease of Kwantung territory, and of possession of the South Manchuria Railway, the former to expire in 1997, the latter in 2002; also, the extension of the term of the Antung-Mukden railway to 2007.

2. A revised loan agreement providing for Japanese control of the management of the Kirin-Changchun railways.

3. Whenever the Chinese Government desired foreign capital, either for railway construction, or in the form of loans secured on local taxes (except on the salt gabelle and the customs revenue), they must first negotiate with Japanese capitalists.[40]

4. Japanese subjects were to be given concessions to prospect for and develop mines in nine named localities in South Manchuria, localities, which, in fact, comprised the principal proved mining sites of value in the region.

5. Japanese subjects were granted the privilege of leasing land "necessary either for erecting buildings for various commercial and industrial uses or for agricultural purposes" in South Manchuria; the term "lease" to mean "leases for a long term up to thirty years and unconditionally renewable". Japanese subjects were to be permitted to reside in the in-

[40] In the original demands China was asked to submit such proposals to the Japanese Government.

terior, outside the "open ports", and to carry on commercial enterprises of whatever character.[41]

6. Finally, Japan dropped the claim to participate in the Chinese police system in Manchuria, and obtained instead the right for Japanese advisers, political, financial, military and police, to be given preference in case foreign advisers were required in South Manchuria.[42]

Just what effect these new agreements of 1915 had upon the Japanese position in South Manchuria, and what they contributed to the establishment of an exclusive economic monopoly, with incidental political influence, cannot be explained in a phrase. Some of these nominal legal rights have not been implemented with specific agreements subsequently, and for want of such agreements, they have been but partially enforced. Such, for example, are the provisions granting Japanese subjects the right to travel, to reside, to conduct business enterprises, and to lease land in the interior. Others, like the provision that Japanese advisers should be employed in

[41] Japanese subjects were to produce passports, to subject themselves to Chinese police regulations, and to submit to Chinese process in civil and criminal cases. A Japanese consular officer was to try and to decide cases, however, where a Japanese was a defendant in a suit brought by a Chinese, a Chinese official being permitted to attend the trial. This was, in fact, no new provision, Japan having exercised this right under the treaties giving Japanese subjects extraterritorial rights. But in one respect these new provisions went farther: Japanese consular officers were to be consulted before the local Chinese authorities could put into effect new police regulations as against Japanese.

[42] Sino-Japanese treaty and exchange of notes of May 25, 1915, respecting South Manchuria and Eastern Inner Mongolia. (*The Sino-Japanese Negotiations of 1915*, pp. 44-58; MacMurray, Vol. II, pp. 1220 ff.)

Chinese administrative posts in Manchuria, have not in practice been exclusive.[43] Moreover, the question arises as to whether specific commercial grants to the Japanese in these agreements, as a matter of international law of treaty interpretation, as well as a matter of right specifically claimed by outside treaty states, do not constitute exclusive grants to Japanese subjects, but appertain to all the powers having applicable most-favored-nation clauses in their China treaties. Again, aside from the application of most-favored-nation treatment to the Sino-Japanese agreements of 1915, there is the confused question of possible conflict with other treaty commitments of China, and more definitely with rights of non-Japanese financiers, including especially American and British, whose governments reserved their rights in both the Hsinmintun-Fakumen and the Chinchow-Aigun railway projects.[44]

[43] The United States immediately objected to the granting to Japanese of an exclusive right to fill such advisorial positions or to serve as instructors, military and technical in government institutions in South Manchuria. The American Minister declared to the Chinese Foreign Office that the State Department understood, however, that "the Chinese Government will not discriminate unfairly in their selection". (*U. S. For. Rels.*, 1915, p. 110.) Viscount Ishii, in his memoirs, *Notes on Diplomacy*, correctly states the official position of the United States Government anent the Sino-Japanese treaty and notes of 1915: "In 1915, with respect to the several Sino-Japanese agreements, the United States, although she made reservations not to accept restrictions, avoided all actions which appeared to recognize our special interests." (*Gaiko Yoroku*, Ch. VI.) *Vide:* Appendix A.

[44] The American Minister in Peking on October 31, 1916, clearly reserved the right of the American financial group which originally

The fact is that Japan's sphere of interest in South Manchuria was made the more exclusive principally as a result of two main groups of commitments obtained from China in the Sino-Japanese agreements of 1915. The one comprises the several railway, mining and general loan agreements which have resulted from the basic concessions of principle made to Japan. The other has resulted from the actual interpretation in practice of the provisions designed to permit Japanese subjects to travel, reside, carry on business enterprises and lease land in the interior. In spite of the absence of local Chinese regulations to implement the general treaty, Japanese subjects do travel, reside, conduct business and lease land in the interior of Manchuria. As for the provisions of the 1915 agreements which seem especially to have a " political " bearing—the employment of Japanese advisers and instructors—these, in practice, have not become important. Nothing resembling a so-called " sphere of influence " has resulted from this situation, and at the Washington Conference the Japanese Government finally withdrew entirely the claim that Japanese were to

signed the preliminary agreement for the Chinchow-Aigun railway on October 2, 1909. His communication to the Acting Minister for Foreign Affairs in Peking declared: "The rights accruing to the American Group under these arrangements have never been relinquished, but . . . . have been expressly reserved and continued." (*U. S. For. Rels.* 1917, pp. 168-169.) A similar statement was made by the American Government to Japan on January 8, 1917. (*Ibidem*, p. 169.)

have the exclusive rights of appointment to such positions in South Manchuria.[45]

As for the distinctly commercial concessions obtained from China, the agreement that Japanese capitalists should be first approached if foreign capital were needed for railways, mines or other loan purposes, these were the subject of subsequent international question in the negotiations attending the formation of the International Banking Consortium in 1918 and following. These negotiations, however, left Japan in complete control of the mining sites which had been acquired from China in 1915. As for Japanese rights to finance railways in South Manchuria, these have been contested, in some cases successfully, by foreign interests associated with the International Banking Consortium.[46] The sphere of interest which Japan possessed in South Manchuria even after 1915 was not exclusive in law.

[45] *Conference Proceedings*, pp. 1560-1562.

[46] In 1916 Baron Shibusawa visited the United States in order to obtain American funds for investment through Japanese agencies in China. This form of coöperation, however, was not widely approved, in spite of the feeling that the Terauchi Ministry, which followed that of Count Okuma, was committed to a more liberal policy with respect to China. "The form of coöperation which the Japanese have actually proposed—unofficially—suggests an informal partnership in which Americans would be expected to supply capital and leave it to Japan to do the investing in China. To this there have been raised, and there stand obvious objections. It might be possible, however, to consider the invitation in principle and offer amendments to the plan proposed." (Quoted from Dr. S. K. Hornbeck's address on June 1, 1917, Long Beach, N. Y., as printed in: *Proceedings of the Academy of Political Science*, Vol. VII [1917-18], p. 619.) Nothing tangible eventuated from the Shibusawa mission.

CHAPTER VII

Japan's Claims to Special Interests in Manchuria: 1916-1918

1. The Lansing-Ishii Agreement of 1917. The Lansing-Ishii agreement of November 2, 1917, has, ever since its negotiation, been a subject of conflicting interpretations on the part of individuals who have not spoken with official responsibility for their views. Moreover, there is some evidence, meagre as it is, to support the assertion that individual officials of the two governments signatory to that exchange of notes have, at one time or another, made public statements which indicate a wide discrepancy in the views of the two governments as to its proper interpretation. Conspicuous among such variations in interpretation are the mutually irreconcilable views of the late Mr. Robert Lansing, Secretary of State, before the Senate Committee on Foreign Relations in August, 1919, and those of Viscount Ishii Kikujiro, the special envoy at the head of a mission, who negotiated the agreement with Mr. Lansing. The latter views, which evidently do not conform to those expressed by Mr. Lansing before the Senate committee in 1919, have recently been published in the viscount's autobiography, *Gaiko Yoroku,* which may be translated " Notes on Diplomacy ". Except for this latter conflict of testimony, which is exceed-

ingly difficult of appraisal, in spite of the authority which attaches to the statements of these two diplomats, especially because it is obvious that the statements of both have been made for purposes of self-exoneration and under the obvious censure of none-too-lenient political parties, there does not appear to be a body of fact, derived from actual conflicting official interpretations in diplomatic situations thereafter, which may be said to furnish justification for the assertion that, *officially,* the governments of the two countries have maintained mutually irreconcilable views as to the Lansing-Ishii agreement. A caution, in support of the above assertion, needs here to be made: this exchange of notes of 1917 has, no doubt, been used, on more than one occasion, to create the *impression* that the United States Government made greater or other commitments as to Japan's rights and interests in China than can be ascertained by a mere reading of the texts of the notes finally exchanged. A distinction needs, therefore, to be sharply drawn between *an official interpretation* of the notes exchanged and the use which a state may have made of them as a matter of *policy.*

At the outset, he who would presume to appraise the implications of phraseology used in the formal exchange of notes, commonly called the Lansing-Ishii agreement, and evaluate them in an international legal sense, is confronted with the fact that neither the American nor the Japanese Government have ever published the record of the conversations

which took place between Viscount Ishii and Mr. Lansing, from the date of their first conversations, September 6, 1917, to the date of the signing of the formal notes exchanged.[1]

Until such time, then, as a full account of the preliminary conversations and possible interpretive reservations of the Lansing-Ishii agreement is published officially by one or the other of the two governments, it will be necessary to rely on such data of a testimonial nature as so far have been made available. Fortunately, there is today a body of data of this nature which was unavailable a few years ago, the use of which may permit of an interpretation of the Lansing-Ishii agreement which may even survive the subsequent publication of a more detailed record of those conferences. These, while not entirely satisfactory, are illuminating.

[1] *The Foreign Relations of the United States for 1917* has now been published, but, except for records of exchanges of views between Ambassador Shidehara and Secretary Lansing before the arrival of the Ishii Mission, valuable in themselves, there is no record here of the conversations between Viscount Ishii, on the one hand, and Secretary Lansing or President Wilson, on the other. Viscount Ishii's memoirs, on the other hand, do give an account of certain of the conversations, beginning September 6, between Ishii and Lansing. These carry the weight of authority of the author, but not that of his government. Secretary Lansing's testimony before the Senate Foreign Relations Committee in 1919 as to the meaning of the term "special interest", etc., is illuminating, but must be read with caution, particularly as certain Republican senators, notably Mr. Borah, obviously used the occasion as an opportunity to make political capital out of alleged "indiscretions" of the previous Democratic administration. Nor did the senatorial inquiry succeed in eliciting from Secretary Lansing a full statement of his negotiations with Viscount Ishii. (Cf. Willoughby, *op cit.*, Vol. I, pp. 368 ff.)

As to the purpose of the Ishii Mission to the United States, there remains some room for doubt. However this may be, it is apparent that neither the mission itself nor its results can be disassociated from the fact of the prevalence of the Great War—particularly in Europe. Had there been no war in Europe there would have been no Lansing-Ishii agreement. The State Department was, apparently, somewhat puzzled when, on June 14, 1917, the Japanese Embassy at Washington informed the Secretary of State that Viscount Ishii, former Minister for Foreign Affairs, had been appointed on June 13 " to be Ambassador Extraordinary and Plenipotentiary and ordered to proceed to the United States ".[2] On the following day, the then Japanese Ambassador at Washington read to Secretary Lansing an " oral communication " which set forth that Japan had " special and close relations, political as well as economic, with China ", affirming that Mr. Bryan, while Secretary of State, had on March 13, 1915, recognized " this state of affairs " in his note to Viscount Chinda. He then went on to suggest that it would be greatly favorable to the friendly relations of Japan and the United States if Mr. Bryan's statement might be reaffirmed by some " appropriate means ".[3]

[2] *U. S. For. Rels.*, 1917, p. 258.

[3] *Ibidem*, p. 259. On June 22, Secretary Lansing informed the Japanese Ambassador that the United States would be glad to receive Viscount Ishii and his suite. (*Ibid.*, p. 260.)

Herein lies, no doubt, a suggestion of the principal purpose of the Ishii Mission: it was an effort to secure, at this presumably opportune time, a definite recognition on the part of the United States of certain claims which Japan sought to put forward with regard to her position in China, and more especially in Manchuria. The mission was, however, as Viscount Ishii notes in his autobiography, a " war mission ". The United States had never officially recognized any Japanese claim to " special interests " in China, other than such recognition as was contained in the Bryan statement of 1915, during the time of the negotiation of the Sino-Japanese treaties and notes which were attended by the famous " Twenty-one Demands " and an ultimatum. Viscount Ishii's own statement on this point is worth quoting: " In 1915, with respect to the several Sino-Japanese agreements, the United States, although she made reservations not to accept restrictions, avoided all actions which appeared to recognize our special interests." [4] The truth of Viscount Ishii's assertion is borne out by the texts of the notes sent by Mr.

[4] *Gaiko Yoroku,* Chapter VI, " Japan's Special Interests in China ", pp. 132-164. (Published by Iwanami Shoten, Tokyo, Japan, 1930, in the Japanese language.) A paraphrase of this specially pertinent chapter, with quotations from the original in English translation, may be found in Appendix A to this volume. Liberal quotations from the work may also be found in two excellent book reviews, one by Mr. Wilfred Fleisher, of the staff of the *Japan Advertiser,* Tokyo, published in the New York *Times Book Review,* January 25, 1931, pp. 11 ff., and the other by Dr. K. K. Kawakami in *Japan Magazine,* San Francisco, February, 1931, pp. 8 ff.

Bryan to Japan, March 13, and to China, May 13, 1915.[5]

"In order to silence mischievous reports", said the Lansing-Ishii agreement of November 2, 1917, this agreement had been negotiated. These "mischievous reports" may have referred to one of two things, or both. The enemy propaganda of the Germans—to which it was the vogue, then, to attribute all sorts of ills in the world—had been alleged as the cause of estrangement between the two states.[6] But there is more evidence to support the assertion that the "mischievous reports" referred to had to do with dissatisfaction of the Japanese Government as to the attitude of the late Dr. Paul S. Reinsch, then American Minister at Peking.

What had occurred just previous to the appointment of Viscount Ishii on this "war mission" was

[5] *U. S. For. Rels.*, 1915, pp. 105, 146.

[6] Ishii's memoirs record that in the first meeting with Lansing he stated that, "having been driven to engage in a war against a common enemy", Japan and the United States ought to avoid being "taken advantage of by the enemy's estrangement policy". He noted two subjects provocative of such friction: the immigration question and the "Chinese question". There being no "timely interest" in the former, Ishii stated that be believed "that malicious measures will be taken principally with reference to the Chinese question". Lansing is recorded as replying that he was in full agreement. But he also noted that "propaganda" reaching his ears was to the effect that "while the Eurpoean powers are engaged in a life-and-death struggle, Japan is taking a free hand in the Far East and is especially establishing an unsurpassingly superior position in China". "Some maintain," Mr. Lansing is represented as having said, "that, left alone, the territorial integrity and the principle of the open door and equal opportunity [in China] would become mere paper doctrines". (*Gaiko Yoroku*, Ch. VI.)

this. The submission of the "Twenty-one Demands" had occurred in 1915. Minister Reinsch, as his own memoirs substantiate, had not taken kindly to this exhibition of Japanese war diplomacy. The United States had not then entered the war, nor had China. Under the circumstances, however, Reinsch felt that Japan was taking advantage of the situation in the East to confront the western powers with a *fait accompli* which would be highly prejudicial to the integrity of China. In 1916 the Chêngchiatun incident had occurred, during which the Japanese sought to press their claims in Manchuria and so-called "Inner Mongolia" for stationing Japanese consular police in the interior, as a corollary of extraterritoriality.[7] The unscrupulous Mr. Nishihara, of the "Nishihara Loans" fame, was sent to China by Premier Count Terauchi in early 1917. Consequently, the day after the State Department was informed of the appointment of Viscount Ishii, the Japanese Embassy, in an "oral communication" to the department, inferentially referred to Dr. Reinsch in the statement which follows:[8]

"... The Japanese Government has attached no importance to the recent rumor repeatedly finding its way to the press despatches from China to the effect that the American Minister at Peking was more or less involved in the present

[7] The Chêngchiatun incident is discussed in detail in a companion volume in this series: *Japanese Jurisdiction in the South Manchuria Railway Areas.* Note the reports of Minister Reinsch on this incident in: *U. S. For. Rels.*, 1917, pp. 241 ff.

[8] *U. S. For. Rels.*, 1917, p. 259.

political crisis in China. Again, with regard to the recent important representations made by the American Government to the Chinese Government relative to the political situation in China without previously consulting Japan, the Japanese Government does not entertain the slightest doubt as to the fair and unselfish motives of the United States Government."

Whether these statements should be taken at their face value need hardly be discussed here. The reference to the "important representations" of the American Government was to the action of President Wilson, through Mr. Lansing, in communicating to the Chinese Foreign Office a statement, dated Washington, June 4, 1917, which was nothing more than an exhortation to the Chinese to compose their differences. It urged China to "set aside her factional disputes", and, in her own interest, especially in order to enable her "to resume and continue her political entity and to proceed along the road of national development", to establish "one central, united and responsible Government".[9]

Dr. Reinsch had communicated to the Department of State an interpretation of the Chinese political crisis which was to the effect that the "reactionaries had planned to commit this country to participation in the war upon terms that would make China de-

[9] *U. S. For. Rels.*, 1917, pp. 48 ff. A communication was sent, *mutatis mutandis*, to the British and Japanese Governments on the same day, urging upon them to make a similar declaration, in order to exhort the Chinese to compose their factional disputes and, in their own interest, "restore national unity and maintain internal peace". China's own interests were stated to be more important than "the question of relation to the world war". (*Ibid.*, p. 49.)

pendent upon Japan ".[10] President Li Yuan-hung desired to have China enter the war against Germany. Japan had for some time opposed China's entry into the war. A group of " pro-Japanese " military *tuchun,* posing as pro-Ally, had threatened a general outbreak of civil war. In fact, it was the parliamentary party which had been favorable all along to severance of diplomatic relations with Germany. On June 11, Dr. Reinsch telegraphed to the Department of State, on the occasion of General Chang Hsün's advance on Peking, that, while the " Japanese Minister stated that the last hope for peace lies in Chang Hsün's mediation," it was rather likely " that the success of Chang Hsün would cause a new revolution in the South ".[11] Under these circumstances, said Dr. Reinsch, when Parliament had been dissolved, " Japan will advance a loan and expect to receive privileges desired without check from Parliament ". Reinsch repudiated the assertion, then appearing in the Japanese press, that he was intervening in Chinese politics: he dealt solely with the government to which he was accredited.[12]

[10] *Ibidem.,* pp. 54 ff.

[11] *Ibidem,* p. 60.

[12] The Japanese press during this period showed great irritation at the Wilson-Lansing-Reinsch communication to the Chinese Foreign Office exhorting them to compose their factional difference and prevent a new civil war. Reinsch was personally blamed. *Chargé* Wheeler at Tokyo telegraphed the Department of State on June 8 that the Vice-Minister of Foreign Affairs " expressed surprise that this, if the report were true, had been done before the Japanese Government replied to our proposal ". (*Ibid.,* p. 58.) Lansing replied that the action of the United States did not prevent Japanese coöperation in a similar policy. (*Ibid.,* p. 59.)

This was the situation and the action to which the Japanese Ambassador at Washington referred on June 15, the day after Japan had communicated to the Department of State her desire to appoint Viscount Ishii at the head of a mission to the United States. But there was an entirely distinct element involved in this general situation, which preceded the despatch of the Ishii mission to the United States, and which had particular bearing on Japan's position in Manchuria. With the opening of the year 1917, the American banking groups who had participated, until formal withdrawal in 1913, in the Six-Power Consortium, were being urged to re-enter the Consortium to undertake loan activities in China. On January 25, the Japanese Ambassador inquired of the Secretary of State if such re-entry were likely. Secretary Lansing replied that his government looked with favor upon financial coöperation between Japanese and American financiers in China, provided that such coöperation were not in support of "political objects". "One thing, the Secretary said, the American Government could not approve—that was the coercion of China".[13] The Ambassador then inquired "about the proposal to coöperate in railway building in Manchuria". Lansing replied that the Japanese Government must be aware that "the American Government recognized that Japan had special interests in Manchuria".[14] There had

[13] *Ibidem*, p. 117.
[14] *Ibidem*, p. 117.

been no " declaration to that effect ", but his government, he said, had shown a " practical recognition of the fact ". The Japanese Ambassador then inquired about the " proposal made by the American Minister in Peking ". Lansing confessed ignorance of any " proposal ".[15] The significance of this reference lies in two considerations: these conversations contain some mention of Japan's " special interests " in Manchuria; they also indicate that Japan was much concerned over a possible attempt on the part of the American bankers to resume railway financing activities of a nature somewhat similar to the Chinchow-Aigun project of 1909-10.

This matter of Japanese opposition to American railway financing operations in Manchuria was at that time giving Minister Reinsch considerable concern. On January 23, 1917, the Japanese Minister replied to his suggestion that Japanese and American interests coöperate in railway construction in Manchuria by stating that " on account of Japan's special position in Manchuria with regard to railway investments as provided in the Japanese-Chinese treaty of May, 1915 ", he could not give any

[15] *Ibidem*, p. 117. Dr. E. T. Williams of the Division of Far Eastern Affairs points out that no instructions on the point had ever been sent to Dr. Reinsch, and that the instructions probably referred to had to do with the department's statement that it had no objection to American-Japanese coöperation in the Grand Canal project. As an alternative to this, Dr. Reinsch may have mentioned some such coöperation with reference to railway construction in Manchuria.

satisfaction as to this request.[16] On January 30, Dr. Reinsch informed the State Department of the Japanese Minister's assertion of a claim to a " special position " for Japan in Manchuria, under the 1915 agreements, and enclosed a memorandum of his reply. He had assured the Minister that the United States had no intention " of pursuing an obstructionist policy towards Japan ", but that " the so-called ' special position ' of Japan in Manchuria has not yet been recognized beyond the specific grants and concessions, the sum total of which makes up what may be called the legal position of Japan in that region ".[17] Dr. Reinsch then expressed the view to the Department of State that " any rights or privileges which Japan may claim in Manchuria cannot be deduced from an abstract conception of a ' special position ' there, but must be shown as flowing from particular grants or concessions; and that the latter cannot be admitted to have superseded prior rights or concessions held by others which have not been voluntarily given up ".

Dr. Reinsch had, however, received the State Department's telegram of January 27, in which Lansing referred to his statement to the Japanese Ambassador at Washington that " the Department recognizes that Japan has special interests in Manchuria ". This use of the term " special interests "

[16] *U. S. For. Rels.*, 1917, p. 170.
[17] *Ibidem*, p. 171.

puzzled Dr. Reinsch. He, therefore, made the following explanation to Lansing of his own attitude as expressed to the Japanese Minister in Peking: [18]

"The Legation has hitherto adhered to the position that while Japan has many specific concessions in southern Manchuria her position in that region is to be understood as made up of the sum of such specific concessions; in other words, that privileges could be claimed not by virtue of a so-called 'special position', but only under some specific grant.

"In my reply of January 28, 1917, to the Japanese Minister in connection with railway development in Manchuria, I expressed surprise because of a certain hesitancy on his part in recognizing the appropriateness of American cooperation in Manchuria because of Japan's 'special position' there. For my part I avoided the mention of 'special position' but used instead 'specific concessions and rights held by Japan of which its legal position in that region is made up'. In view of the note of the American Government to China and Japan. dated May 11, 1915, I have considered that the American Government had not yet agreed to the limitation of American rights by special privileges granted to Japan in southern Manchuria and Eastern Inner Mongolia by the exchange of notes of 1915, particularly with respect to preference in the matter of railways and security of taxes in these districts. It has also been my understanding that the right of residence and business granted to Japanese by the Treaty of May, 1915. respecting southern Manchuria and Eastern Inner Mongolia, would by the 'most favored nation' clause, automatically accrue to the benefit of American citizens desirous of availing themselves thereof."

Dr. Reinsch then noted that the American consul-general at Mukden had reported to the Department

[18] *Ibidem*, p. 182.

in February, that the Japanese press had placed an oblique construction on Secretary Lansing's statement of January 24 to the Japanese Ambassador, and that the term " special interests " was used to refer to this new position presumably conceded by the United States in favor of Japan in Manchuria. He, therefore, requested instructions as to whether he were warranted " in assuming that the ' special position ' of Japan as thus recognized must be understood as confined to those specific rights and privileges which have been obtained by the Japanese Government from China and Russia by way of international agreement, thus excluding an interpretation which upon the basis of these rights would claim for Japan a ' special position ' implying general rights of preference and suzerainty in the regions affected ".[19]

The reply of Secretary Lansing to Dr. Reinsch's inquiry as to the exact meaning of these terms " special interests " and " special position ", which he had used in conversation with the Japanese Ambassador in January, furnishes a far more illuminating account of the official attitude of the United States toward Japan's claims of right in Manchuria than any of the negotiations which were conducted between Secretary Lansing and Viscount Ishii. Under date of April 16, Secretary Lansing communicated the following to Minister Reinsch:[20]

[19] *Ibidem*, p. 183.
[20] *Ibidem*, p. 187.

"In my conversation with the Japanese Ambassador I had in mind nothing more than to point out the difference between conditions in Shantung and Manchuria, and, in using the phrase 'special interests', I had reference only to such specific concessions as the lease of the Kwantung Peninsula and the leases of the South Manchuria and other railways with the right to maintain railway guards, *et cetera*.

"With respect to the notes exchanged in May, 1915, by Japan and China the Department has not altered its position as stated in its telegraphic instruction of May 11, 1915.

"The assumption of the Legation, therefore, is correct, that the 'special interests' of Japan, in the view of the Department, are to be understood as confined to those specific rights and privileges which were obtained by the Japanese Government from China and from Russia by way of international agreement."

The significance of these exchanges of views as to the attitude of the United States towards Japan's claims to a "special position" or "special interests" in Manchuria lies in two considerations: first, Japan had sought, but failed to secure from Secretary Lansing, several months before the appointment of the Ishii Mission, a recognition of such claims *vis-à-vis* both Manchuria and Shantung; and, second, that Secretary Lansing had replied in such a manner as to indicate the attitude of his government that Japan's "special interests" in Manchuria were solely such as were clearly derivable from already existing treaty rights there, especially under agreement with China. These "special interests", therefore, in so far as they were recog-

nized by the United States, consisted of " such specific concessions as the lease of the Kwantung Peninsula and the leases of the South Manchuria and other railways " there. These were valid rights, not needing additional recognition by the United States. The term " special interests ", therefore, which appeared later in the Lansing-Ishii agreement of November 2, 1917, had already been defined so far as the United States was concerned. It is pertinent, then, to anticipate our further analysis of the Lansing-Ishii negotiations by stating that at no time during the course of those negotiations did Secretary Lansing admit any contrary definition of the term.

The Ishii mission was, on the surface, a " war mission ", as Viscount Ishii expressed it, for a purpose similar to those of Viviani and Balfour, who had preceded him. He points out in his memoirs, however, that he had more to do than visit Mount Vernon, and that his mission was especially for the purpose of arranging for " an exchange of frank opinions between American and Japanese responsible persons on the Chinese situation, and to make some headway toward an understanding ".[21] The attempt to place blame on German propaganda was merely a subterfuge—used by both Ishii and Lansing.[22]

[21] *Gaiko Yoroku*, Ch. VI.

[22] It has long been rumored that the Ishii Mission was associated in some way with a desire of the United States to encourage Japan to take a more active part in naval warfare against the Germans in

The Ishii Mission arrived in Washington in September, 1917. On September 6, Viscount Ishii had his first conversations with Secretary Lansing, having previously been received by President Wilson in person. Ishii records in his memoirs that President Wilson on this occasion had emphasized that the United States had no concern in China other than the policy of observing the " open door " and that he was personally strongly opposed to the establish-

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the Pacific area. It has thus been associated with the secret pledges, obtained by the Japanese Government preceding the mission, but unknown then to Secretary Lansing, from Great Britain, France and Russia as to the eventual disposal of Shantung after the war.

This view seemed to have been supported by Lansing's press statement that the negotiations had resulted in an expression of Japan's desire to coöperate fully with the Allies in the war against Germany. He referred to simultaneous discussions on military, naval and economic matters, and also stated that a complete understanding had been arrived at with respect to "naval coöperation in the Pacific". (*Current History*, Oct.-Dec., 1917, p. 549.) In spite of these intimations, however, it seems evident that such negotiations were conducted, not especially by Ishii, but by other members of his suite, and that they were only indirectly related to the principal purpose of the mission. The Lansing-Ishii agreement, therefore, was the result of negotiations independently conducted, and was not conditioned by the ancillary negotiations on such matters as referred to the conduct of the war. The question of the lifting of the American embargo on steel was already a subject of negotiation before the arrival of the Ishii mission, and it was not terminated until March, 1918. Those negotiations with Japan were evidently independently conducted. In view of these facts, I am inclined to discount the suggestion that the Lansing-Ishii agreement was, in some manner, forced on the United States as a war measure. It was a "war measure" only in that Japan and the United States were allies in a war which was then being waged—a war which had a Far Eastern phase, namely, the enhancement of Japan's power and position in China, especially in Shantung and Manchuria.

ment of " spheres of influence " there.[23] Viscount Ishii had replied that, although Russia and Germany, in Manchuria and Shantung, were responsible for the original establishment of such " spheres of influence," Japan had adhered to the Hay policy of the " open door " without qualification.

Viscount Ishii records that, immediately upon returning to his hotel from his interview with the president, he cabled his government for instructions, advising that the Japanese Government make a declaration abolishing " spheres of influence " in China. Japan had been accused, he records, of violating the " open door " in Manchuria, and it would have been a wise policy to " melt foreign suspicions " by advocating their abolition. The policy of the " open door ", in any event, was of a nature to operate in Japan's favor: distance gave Japan an advantage as against Great Britain and the United States. " There is no wiser policy," Ishii notes in his memoirs, " than to throw Manchuria open and to enforce the principle of equal opportunity *vis-à-vis* all nations." " Such was the reason," according to Viscount Ishii, " why I cabled that it was well to give satisfaction to the other side by endorsing President Wilson's proposal to abolish spheres of influence and to create thereby an incentive for their

[23] *Gaiko Yoroku,* Ch. VI. Here intrudes the phrase " spheres of influence "—which never had any accurate application to China! It is difficult to believe that President Wilson did not realize this.

endorsement of our own contention."[24] But he "waited in vain for instructions in answer" to his cable. There was a division of opinion in the Foreign Office as to the desirability of making such a declaration, a large number disapproving of it. Ishii, therefore, was "compelled to enter upon the negotiations with Secretary Lansing on the Chinese question" without further instructions. His original instructions had been only "general"—he was to get as much as possible.

For an account of the actual negotiations with Secretary Lansing one must go to Ishii's own memoirs, which give what appears to be a verbatim record of most of their conferences from September 6 until about October 8, and to Lansing's testimony before the Senate Foreign Relations Committee. Sidelights, and some substantial data are included in *Foreign Relations of the United States* for 1917, but the material does not relate to the Ishii-Lansing conferences themselves.

There seems now to be substantial agreement as to the order and general character of the subjects discussed in these conferences, Ishii's memoirs, in large measure, bearing out the testimony of Lansing before the Senate committee in 1919. Viscount Ishii's account, especially because it records the progress of the discussions, may well be taken as the cadre

[24] Hereafter, unless otherwise noted, all quotations attributed to Viscount Ishii are from Chapter VI of his memoirs. (*Vide:* The New York *Times Book Review,* Jan. 25, 1931; The *Japan Magazine,* Feb. 1931, p. 8.)

for a résumé. On the first day (apparently September 6) the following exchanges of views occurred: Ishii deplored the " estrangement policy " of Germany, suggesting that these " malicious measures " be spiked by some declaration on the part of the two states. Lansing said that propaganda had reached his ears to the effect that Japan was " taking a free hand in the Far East " and was establishing " an unsurpassably superior position in China ". He suggested a joint declaration respecting China's territorial integrity and the principle of the open door. Ishii argued that that was unnecessary, as that had been done before, and to repeat merely such a declaration at this juncture would convey to the Japanese people that the United States " suspected Japan's ambitions ". Japan had interests in China as a whole " superior " to those of any other foreign state—much as the United States had in Mexico. This arose from "providential geography ", and, although they existed without formal recognition from any other state, such would be " advantageous ". This was the reason why Japan's " special interests " in China had been recognized by Great Britain in the Anglo-Japanese alliance and elsewhere. To this Lansing is recorded as having replied: " The conversation unexpectedly has come to possess a serious bearing. We shall both give careful consideration to the matter and meet again before long." [25]

[25] Viscount Ishii then proceeded to New York to attend the mayor's reception for him, and to give addresses which he felt were desirable

On Viscount Ishii's return to Washington after his New York visit, the viscount was confronted by a request from Lansing that he indicate what phrase he desired to propose for the text of the exchange of notes contemplated. Ishii replied that the term "paramount interests" best described Japan's interests in China. Lansing, however, opposed it, asserting that it had "an extremely strong meaning", and that, once having recognized Japan's position in that phraseology, the United States would not be in a position to protest whatever action Japan might subsequently choose to take in China. Ishii replied, however, that the term "paramount interests" had first been used by Secretary Seward, many years before, and that Mr. Freylinghuysen had used it to describe American interests in Mexico. This was why he purposely had suggested that term, since Japan's interests in China, as he put it, "are

to obtain popular support, and thus utilize them to influence the political administration in Washington. He records that he intentionally stressed Japan's desire to follow the policy of the "open door", and argued that that was distinctly in her favor for commercial reasons. He "frankly discussed the possible existence of an idea resembling the Monroe Doctrine, not only in the Western Hemisphere, but also in the East". He further tried, he records, "in a round-about way to present the inference of what may be called an Asiatic Monroe Doctrine (*Asia Monroe-shugi*)". "Such a matter as the Asiatic Monroe Doctrine," he records, "is decidedly delicate and it was not without the possibility of causing misunderstanding among the American people." Yet, so wholehearted had been his reception, he felt encouraged to "dare to discuss such a delicate point". He returned to Washington reassured that the State Department and President Wilson might be more concessive as to his claims for a special position for Japan in China.

not different from " those of the United States in Mexico. He agreed to drop the term, however, and, after some exchange of views, he proffered the phrase " special interest and influence ". This, too, met with objection on Lansing's part, and they finally agreed on a " compromise " term—" special interests ", dropping the " and influence ". As if the negotiations stopped here, Viscount Ishii drops the subject of his conferences with Secretary Lansing. What transpired between October 8 and October 27 he does not record.

Secretary Lansing's testimony before the Senate Foreign Relations Committee harmonizes entirely with the above interpretation of the course of the negotiations. That testimony, however, includes Lansing's interpretations of the meanings of the phraseology used—especially the term " special interests " which was included in the final agreement—and, on these matters, Viscount Ishii's memoirs show a very different interpretation. The final exchange of notes of November 2, 1917, contained but four brief paragraphs in the nature of actual declarations of agreement. They are here quoted in full:[26]

" The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the

[26] *U. S. For. Rels.*, 1917, pp. 264-265. This is the official and definitive text of the two notes, both of which were in the English language.

United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

"The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurance of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other powers.

"The Governments of the United States and Japan deny that they have any purpose to infringe in any way the independence or territorial integrity of China and they declare, furthermore, that they always adhere to the principle of the so-called "open door" or equal opportunity for commerce and industry in China.

"Moreover, they mutually declare that they are opposed to the acquisition by any Government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity in the commerce and industry of China."

There is nothing ambiguous about the last two paragraphs, which reaffirm the adherence of Japan and the United States to the "open door"—without facetious addition of "and equal opportunity"—and to the policy of respecting the "independence and territorial integrity of China". If these affirmations mean anything they seriously discount any interpretation of Paragraph 2 that would define such "special interests" as otherwise than a mere declaration of an axiom of geography. The

first paragraph is, indeed, ambiguous. The " special relations " and " special interests " referred to are not described in legal language. That these refer primarily to Manchuria is obvious: the Yalu river is the border between Chosen and China.

The Lansing-Ishii agreement was terminated by an exchange of notes of April 14, 1923. Aside from an academic or historical importance, it might be conceded that attention to its international legal implications is without significance today, were it not for certain consequential considerations, among them Viscount Ishii's statement in his memoirs, that the " special interests " of Japan in China were never " the gifts of the United States ", that " Japan's special interests in China from the beginning did not necessitate the recognition of other countries ", and that, " even if the Lansing-Ishii agreement is abolished, Japan's special interests unshakenly exist there ". He concludes his chapter on " Japan's Special Interests in China " with the following assertion: " The special interests which Japan possesses in China neither were created by an international agreement, nor can they become the objects of abolition." If this were true, the Lansing-Ishii agreement added nothing to Japan's claim of right to a special position in Manchuria. Viscount Ishii himself admits that that agreement contained nothing which was not declaratory of rights already possessed by Japan. Thus, from the point of view

of international law, the Lansing-Ishii agreement would be without meaning.

But diplomacy thrives on presumed axioms. The task of the student of the law is to inquire into those axioms. Lansing and Ishii agreed that the phraseology referring to Japan's " special interests " was such an axiom: they disagreed as to the meaning of the axiom. Lansing testified in 1919 that the term had reference only to an " economic " relationship between Japan and China; Ishii contends that it had to do with " political " relationships.

It is a well-recognized principle of interpretation of international agreements that, for the interpretation of particular terminology, not otherwise evidently clear in international law, the negotiations, statements of definition, understandings and reservations preliminary to the actual signing of the agreements themselves, are evidence which may be drawn upon for purposes of ascertaining the meaning of those otherwise undefined terms. Applying this rule of interpretation to the Lansing-Ishii agreement—which, being an " executive agreement ", was not subject to official interpretation by the United States Senate—we may well inquire, then, as to the definition of terminology in the preliminary negotiations.

The first subject considered by the negotiators was that of so-called " spheres of influence " and the " open door ". The first term never had any proper application to China, and Viscount Ishii's

use of the term indicates a misunderstanding of its meaning. Except for noting that neither the negotiations, nor the resulting agreement, contained any express denunciation either of " spheres of influence ", or " spheres of interests "—which latter term would have had proper application—the matter can be passed over as without importance. The matter of the " open door "—which is, in the resulting agreement, declared to be synonymous with equality of opportunity for the commerce and industry of all nations in China— is more important. Lansing's first proposal to Ishii was for a reaffirmation of the principle of the " open door ". He considered it primary; Ishii regarded it as secondary. The resulting formal exchange of notes contains an express reaffirmation of that policy.

It is clear, first, that the Lansing-Ishii agreement itself contains a clear and inclusive declaration of policy on the part of the signatories to the effect that the "special interests " recognized as possessed by Japan in China—whether generally, or " in the part to which her possessions are contiguous "—are not such as to be irreconcilable with maintenance of the " territorial sovereignty ", " the independence or territorial integrity " of China, or, on the other hand, of the policy of preserving equality of opportunity for the trade of all nations. The late President Warren G. Harding, addressing the Senate Foreign Relations Committee in March, 1922, declared that, therefore, the agreement constituted a further

guarantee of the " open door " in China, which was so defined as to preclude the definition of " special interests " as meaning anything but a difference in degree between Japan's position and that of other states.[27] During the negotiations preliminary to the formation of the International Banking Consortium in 1920, the Japanese Government clearly took a position which recognized that they did not claim any general monopolistic rights in Manchuria. " The reaffirmation of the open-door policy ", said Secretary Lansing in his Senate testimony in 1919, " was the most essential thing." [28] We may conclude, then, that no interpretation of the Lansing-Ishii agreement is tenable which is not reconcilable with the policy of maintaining the territorial integrity of China, its " independence ", and the policy of equality of opportunity for trade and commerce there. In this, the agreement itself was explicit.[29]

[27] President Harding: " That this view was not an erroneous construction appears from the meaning ascribed to the phrase 'special interests in China', which is found in the final statement made on behalf of Japan at the recent [Washington] conference. The phrase was interpreted to mean that propinquity gave rise to an interest differing only in degree, but not in kind, as compared with the interests of other powers." (*U. S. Senate Document,* No. 150, 67th Cong., 2nd Sess.)

[28] *U. S. Senate Documents, Treaty of Peace with Germany,* 66th Cong., 1st Sess., Vol. 10, 1919, p. 223.

[29] Later, in 1919, when the Japanese banking group sought to exclude Manchuria and Eastern Inner Mongolia from the scope of loan operations of the International Banking Consortium, the agent of the British group wrote to the British Foreign Office a letter, dated June 21, 1919, in which he stated that the Japanese claim was based on the Lansing-Ishii agreement, but that " the statement does

A second point, next raised in the negotiations, was that rather bluntly made by Secretary Lansing to Viscount Ishii in their very first conversation. "Propaganda" had reached his ears, he said, that Japan was taking advantage of the preoccupation of the powers with the Great War in Europe, and of the internal disorder in China, to seek for herself an entirely "superior" position there.[30] If there were to be a mutual declaration of policy, then, it would have to indicate that any such action was repudiated by Japan.[31] That Viscount Ishii, during these negotiations, actually repudiated any such policy on the part of his government is evident. The formal exchange of notes does not make this clear, but Ishii's memoirs and Lansing's testimony reveal

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not support the interpretation placed upon it by the Japanese". In this letter Sir Charles Addis asserted: "The British group views the admission of special interests in China generally as excluding the claim to special interests in any particular portion of it. *Expressio unius exclusio alterius.*" (*The Nation,* [N. Y.], June 8, 1921, p. 823.) It is not so evident, however, that this British assertion as to the basis for the Japanese claim in Manchuria is entirely correct. There was only incidental mention of the Lansing-Ishii agreement in those negotiations, along with mention of the Anglo-Japanese alliance. Japan did not finally rest her claims, on that occasion, on an interpretation of the Lansing-Ishii agreement different from that officially announced by the United States.

[30] *Gaiko Yoroku,* Ch. VI.

[31] Ishii and Lansing seem to agree here. Lansing's testimony: "I suggested to Ishii that it would be well for the two Governments to reaffirm the open-door policy, on the ground that reports were being spread as to the purpose of Japan to take advantage of the situation created by the war to extend her influence in China—political influence." (*Senate Document,* Vol. 10, 1919, *op. cit.,* p. 223.)

that no such statement was included in the actual notes exchanged publicly simply because it would have been embarrassing to Japan, and to the political party in power there, to publish such a statement. It was clearly understood, as between Lansing and Ishii, that the non-inclusion of such a declaration in the published notes exchanged was not to be understood as constituting any declaration of policy on the part of Japan contrary to her declared policy in affirmation of the "open door" and her desire to maintain the independence and territorial integrity of China. Evidence to support this conclusion may be found in Lansing's telegram to Minister Reinsch, November 5, 1917, in which Dr. Reinsch was instructed to inform the Chinese Foreign Office that the understanding of November 2 "by openly proclaiming that the policy of Japan, as regards China, is not one of aggression, and by declaring that there is no intention to take advantage, commercially or industrially, of the special relations to China created by geographical position", clearly precluded Japan from aggressive and independent action prejudicial to China.[32]

The Chinese Government and people, however, misconstrued the published exchange of notes, they feeling, to quote Dr. Reinsch's report of April 30, 1918, to the Department of State, that "the United States had agreed to give to Japan a free hand with

[32] *U. S. For. Rels.*, 1917, p. 268.

respect to everything related to China ".[33] Even Minister Reinsch seems to have felt that, in addition to the published notes exchanged by Lansing and Ishii on November 2, there may have been certain unpublished commitments. On December 15, 1917, he inquired of the Secretary of State whether the policy of the United States had been otherwise modified than as expressed in the published notes themselves.[34] Secretary Lansing replied, however, that there had been " no change " in American policy toward China from that which was declared several months before the Lansing-Ishii agreement. That agreement, he said, was " intended to define more clearly " the attitude of both governments toward China.[35] The " suspicions and distrust " engendered by rumors that Japan was taking advantage of conditions in China and elsewhere to pursue a selfish policy in the Far East had been removed by the understandings between him and Viscount Ishii. This, then, far from constituting support from the United States for any possible aggressive action of Japan in China, was actually a further safeguard, inasmuch as Ishii had repudiated specifically any such intention on the part of his government. However this may be, the Lansing-Ishii agreement seems to have been terminated by the American-Japanese exchange of notes of April 14, 1923, principally to

[33] *Ibidem,* 1918, p. 93.
[34] *Ibidem,* p. 213.
[35] *Ibidem,* p. 214.

dispel the continuing rumor that Lansing and Ishii had come to some secret understanding not manifest in the published notes exchanged on November 2, 1917.[36]

A third point raised in the negotiations was Viscount Ishii's request for American recognition of Japan's claims to " paramount interests " in China, particularly in the territory contiguous to Japanese territory.[37] Lansing, however, to use his words, " told him then that if it [' special interest '] meant ' paramount interest ' I could not discuss it further ", continuing:[38]

[36] That Viscount Ishii should have felt that the negotiations which terminated the agreement he had negotiated with Lansing were " exceedingly mysterious " was but natural. He correctly notes that it was terminated as a result of the strong desire of the United States to eliminate this agreement as a result of the Washington Conference. A resolution of that conference, furthermore, had pledged the powers to publish all forms of secret understandings between states. Whether justified or not, the widespread feeling that the full meaning of the Lansing-Ishii agreement was not evident on the surface of its terminology justified its termination by formal action. The Lansing-Ishii agreement, as contained in the published exchange of notes of November 2, 1917, was not a secret agreement; the records of the conferences between Lansing and Ishii, especially during October, are still unpublished, at least in official form. These today have no legal significance.

[37] *Gaiko Yoroku,* Ch. VI. Lansing's Senate testimony, *op. cit.,* p. 224.

[38] *Senate Documents, op. cit.,* p. 224. Ishii's memoirs are to the same effect here: " When I replied that ' paramount interest ' best described Japan's interests in China, he immediately declared that the phrase had an extremely strong meaning, that, once recognizing that Japan had such interests, the country which recognized it must blindly follow Japan's activities of whatever description in China, and that the United States could not possibly recognize such a phrase."

"Then it was, during that same interview, that we mentioned 'paramount interest' and he made a reference to the Monroe doctrine, and rather a suggestion that there should be a Monroe doctrine for the Far East. And I told him that there seemed to be a misconception as to the underlying principle of the Monroe doctrine; that it was not an assertion of primacy or paramount interest by the United States in its relation to other American Republics; that its purpose was to prevent foreign powers from interfering with the separate rights of any nation in this hemisphere, and that the whole aim was to preserve to each Republic the power of self development. I said further that so far as aiding in this development the United States claimed no special privileges over other countries."

Viscount Ishii replied that he had intentionally used the phrase "paramount interests" because Secretary Seward, and later, Mr. Freylinghuysen had used it—the latter to describe the position of the United States *vis-à-vis* Mexico.[39] He stated, however, that he "was not insistent upon the phrase" and would agree to substitute some other appropriate term.

Now, the expression "paramount interests" had previously been used by Japan in the Far East in connection with the British recognition, contained in the Anglo-Japanese alliance of 1905, that Japan had "paramount political, military and economic interests" in Korea. On that occasion the British Government had also recognized that Japan had "spe-

[39] *Gaiko Yoroku*, Ch. VI. *Vide:* Appendix A of this book.

cial interests " in Eastern Asia, including China.[40] Ishii explains in his memoirs that, although the term " paramount interests " was of American origin, he could well understand why Lansing objected to its use with respect to China: five years after the British recognition of Japan's claims to "paramount interests " in Korea, Japan annexed it.[41] From these facts, it is evident that the United States did not recognize in the Lansing-Ishii agreement, covertly or otherwise, that Japan had " special interests " in China which were to be interpreted in such a manner as to convey the idea of " paramount interests ". The latter term is, to be sure, not readily definable in international law, but that it connotes a superior and exclusive political right, i. e., one to interfere in matters of administration, is obvious.

A fourth subject discussed by Lansing and Ishii was the phrase " special interests and influence ". Ishii had proposed that this term be substituted for that of " paramount interests ". " But," record Ishii's memoirs, " the other party still found difficulty " and they finally " arrived at a compromise, adopting ' special interests ' by dropping ' and influence '."[42] This is perhaps the strongest evi-

[40] MacMurray, Vol. I, p. 516. Text of the agreement. Viscount Ishii: " In other words the first foreign power which openly recognized Japan's special interests in China was Great Britain."

[41] *Gaiko Yoroku,* Ch. VI.

[42] *Gaiko Yoroku,* Ch. VI. In reply to Senator Brandegee's question in the Senate committee hearing, whether Viscount Ishii, by using the term " special interests " meant to convey the idea of

dence that the final Lansing-Ishii agreement, by using the term " special interests ", did not recognize that Japan had political, as well as economic, interests in China, or any part of it, different in kind from those of other foreign states there. Viscount Ishii, by agreeing to the elimination of the words " and influence ", admitted that the connotation of those words could not subsequently be read into the term " special interests ". Consequently, the compromise term which emerged from these preliminary negotiations, that of " special interests ", was understood by both Lansing and Ishii not to convey either the idea of " paramount interests " or of " special influence "—both of which suggest what we conveniently call " political " ideas.

Shorn of these implications by the preliminary understandings between Ishii and Lansing, the term "special interests " emerges with connotations very different from those which have been attributed to it in certain circles.[43] The term is in itself ambiguous, having no international legal recognition. It has meaning only in the context in which it was used, and that context has been described. It is obvious, however, that beyond the exclusion of the idea of "paramount interest " or " special influence " from

" paramountcy or interest different from that of any other nation ", Lansing replied that Ishii " wished to have inserted the words 'special interests and influence', and I objected seriously to the insertion of the words 'and influence', and they were stricken out ". (*Senate Documents, op. cit.*, p. 233.)

[43] Cf. Buell, R. L. *The Washington Conference*, p. 318.

its meaning, Lansing and Ishii did not decide on a particular definition of the term.[44] Japan was admitted to have " special interests in China, particularly in the part to which her possessions are contiguous "; the general principle that " territorial propinquity creates special relations between countries " was recognized. Manchuria is the only territory of China which is actually " contiguous " to Japanese territory. The " special interests " which the United States recognized Japan as having there, and the " special relations " arising out of propinquity emerge as mere declarations of such rights and interests as Japan already had acquired there, whether by treaty with China, or as a result of the commercial advantages which flowed from proximity to the China market. From the point of view of international law, the Lansing-Ishii agreement added no new right or even concession by way of policy, in favor of Japan.

That this interpretation is the correct one is borne out by the subsequent official interpretation of the Lansing-Ishii agreement. The term " special interests " was merely a diplomatic device for conveying the idea that something tangible had been achieved by way of agreement between the two states, which term, in reality, had no generally accepted meaning in international law. The phrases " open door " and " territorial integrity ", on the

[44] *Senate Documents, op. cit.*, p. 233.

other hand, had long had a very definite and internationally accepted meaning as applied to China. In Secretary Lansing's instructions to Minister Reinsch, November 5, 1917, for the information of the Chinese Foreign Office, he placed upon that agreement what must be accepted as the official American interpretation. The term " special interests " is not even mentioned there. Inferentially, however, they are identified as synonymous with a " certain advantage "—such as is derivable from the " geographical relation " of China and Japan. This refers exclusively to " commercial and industrial enterprises " in China, having nothing to do with questions of political priority. Lansing's statement for the Chinese Foreign Office concluded with the assertion that " the statements in the notes require no explanation. They not only contain a reaffirmation of the open door policy but introduce a principle of non-interference with the sovereignty and territorial integrity of China." [45]

In view of these circumstances, it is difficult to accept the criticism which Viscount Ishii, in his

[45] *U. S. For. Rels.*, 1917, p. 268. Lansing had made perfectly clear to Ishii in the negotiations that, while the United States recognized that " Japan, on account of her geographical position, had a peculiar interest in China, ... it was not political in nature, and that the danger of a statement of special interest was that it might be so construed ". (*Senate Documents, op. cit.*, p. 223.) " . . . . He [Ishii], understood exactly what I interpreted the words 'special interest' to mean." Lansing testified that, because Viscount Ishii continued the negotiations after his specific objections to any term which would convey the idea of " political " interest, Ishii inferentially accepted the Lansing interpretation.

memoirs, has directed to Lansing's testimony before the Senate Committee on Foreign Relations.[46] Ishii insists that " what the United States recognized as Japan's special interests in China were principally political and merely bears an indirect relationship to economic, commercial and industrial matters ". His own account of the early negotiations with Lansing testifies that the latter clearly sought to eliminate the idea of " political " superiority or priority in matters relating to China. Ishii asserts that, if " special interests " were not to be considered " political ", it was either irreconcilable with the affirmations in the same agreement with regard to the " open door ", or was entirely meaningless. It may be admitted that any definition of " special interests "—beyond merely the statement of an axiom of geography and of intimacy of political contact and relationship—which would exclude monopolistic commercial rights, would be quite meaningless in law. The term " special interests ", therefore, emerges as neither of " political " nor " economic " significance. Its sole importance lay in its very lack of meaning. This was diplomacy. No doubt, as a matter of diplomatic policy, both Ishii and Lansing believed they had achieved.

Viscount Ishii, discussing in his memoirs, his own personal interpretation of the meaning of the term " special interests ", has furnished the student with materials which show how entirely intangible are

[46] *Vide:* Appendix A.

the claims which he would have had included within the Lansing-Ishii agreement. He makes Japan's "special interests" practically synonymous with the so-called "right of intervention" in Chinese affairs.[47] He even includes the menace of Bolshevism, the possibility of "dangerous thoughts" in China spreading to Japan, when, as a matter of fact, at the time the Lansing-Ishii agreement was negotiated in 1917 the Bolshevik movement was in its infancy, inconsequential to either China or Japan. Viscount Ishii concludes his discussion of "Japan's Special Interests in China"—including principal references to Manchuria—by an assertion which, in itself, seems to support the interpretation which has here been placed upon the recognition of Japan's "special interests" in China, "particularly in the part to which her territory is contiguous". It is this:[48]

"Japan's special interests in China merely described the actual conditions resulting from natural geography and those interests were not the gifts of the United States. Mr. Lansing and I merely filled, so to speak, the rôles of photographers. Even if we destroy the positive print, becaused the finished photograph does not suit the taste of present-day Americans, the negative still remains. If we destroy the negative, what can we do when the material object still remains? I repeat

[47] *Vide:* Appendix A. Dr. K. K. Kawakami, reviewing Viscount Ishii's autobiography, remarks: "No doubt these were new definitions." (*The Japan Magazine,* p. 9.) Dr. Kawakami doubts that Viscount Ishii made himself clear either to Lansing or to his home government as to his own interpretation of "special interests".

[48] *Gaiko Yoroku,* Ch. VI.

that Japan's special interest in China from the beginning did not necessitate the recognition of other countries. But an unnecessary recognition is at times advantageous. The recognition of our special interests by the United States belongs precisely to that category. It is foolish to count the years of a dead child. Even if the Lansing-Ishii agreement is abolished, Japan's special interests unshakenly exist there. The special interests which Japan possesses in China neither were created by an international agreement, nor can they become the objects of abolition."

Is this not another way of saying that the "special interests" which Japan possesses, or claims to possess, in Manchuria were not legally strengthened by the Lansing-Ishii agreement? The agreement was but declaratory of existing facts. These facts were and are of two sorts: On the one hand, it is obvious that, because Japanese possessions lie adjacent to Manchuria, the Japanese Government naturally has a diplomatic interest in the contiguous territory, and, because, Kobe and Osaka and Tokyo are much closer geographically to Mukden and Harbin than are New York or London, the Japanese naturally have trade advantages in competition with other foreigners.[49] On the other hand, because of this

[49] When the Chinese Minister at Washington, on November 12, 1917, made a declaration—not a protest—to the Secretary of State to the effect that the Chinese Government would not be bound by any agreement entered into by other nations, referring to the Lansing-Ishii agreement, Mr. Lansing replied to him that "there was no thought or intention to bind China". The suggestion of future coöperation with Japan in financial dealings with China had been made to preclude Japan from appropriating the Chinese investment field to herself. The Chinese Minister then asked what "special interest"

proximity and other causes, Japan and individual Japanese firms have a body of concessions, as those associated with the South Manchuria Railway, for example, which are more numerous and more valuable than are those possessed by nationals of any other foreign state in South Manchuria.[50] Japan's "special interests" in Manchuria, therefore, may mean only one of two things, or both: such advantages as flow from geographical proximity and such as flow from her acquired and vested concessionary and proprietary rights there. Neither of these required legal recognition by the United States.[51]

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meant. Lansing replied: "I said it was the statement of an axiom; that it was a statement which could not be successfully denied and could be universally applied and that, in view of the declaration in the last clause of the note signed by Ishii, it was advantageous to China for both Governments declared themselves opposed to 'any government' infringing China's independence and territorial integrity, a declaration which applied to the parties to the understanding as to others; that such a bargain seemed decidedly in China's favor; further in reply to his inquiry I stated I believed the phrase 'territorial propinquity' applied alike to Japan, Russia, France and England and China might also apply it." (*U. S. For. Rels.*, 1917, p. 273.)

[50] Secretary Lansing, when admitting to the Japanese Ambassador on January 24, 1917, that Japan had "special interests" in Manchuria, had used the term to apply to "such specific concessions as the lease of the Kwantung Peninsula and the leases of the South Manchuria Railway and other railways" there. (*U. S. For. Rels.*, 1917, p. 187.)

[51] Dr. Kawakami clearly recognizes the implications of Viscount Ishii's admissions here: "Is not a condition which cannot be undone by the undoing of an agreement also a condition which already exists and which requires no agreement to bring it into existence? Japan's special interests in Manchuria, as Viscount Ishii sees it, are a condition which exists in spite of international agreements or absence of such agreements. Why, then, did he think it necessary, in the first

In spite of the lack of importance of the Lansing-Ishii agreement in international law, however, there is no doubt but that its negotiation was regarded in Japan and China as a distinct victory for Japanese diplomacy in Eastern Asia, and particularly *vis-à-vis* Manchuria. This impression was aided by the premature publicity given a Japanese version of the agreement in Peking.[52] Baron Hayashi gave Premier Tuan a copy of the official texts, these being in the English language, but also appended a translation into Chinese, the latter using different characters to convey the idea of " special interests " from those used in the Chinese translation presented some time later by the American Legation. Dr. John C. Ferguson's testimony before the Senate Foreign Relations Committee in 1919 has long been the subject of misrepresentation on this point. When asked if the Chinese translation supplied by the Japanese Minister in Peking conveyed the idea of " paramount interests " or " special interests ", Dr. Fer-

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place, to exchange notes with Mr. Lansing? To this pertinent question he gives no satisfactory answer, dismissing it with perfunctory remark that sometimes it is convenient to have an established condition recognized by an agreement." (*The Japan Magazine, op. cit.*, p. 9.)

[52] Baron Hayashi, the Japanese Minister at Peking, admitted having communicated the texts of these notes to Premier Tuan Ch'i-jui on November 4—although Ishii and Lansing had agreed that the notes were not to be published until November 6 in the United States, and November 7 in Japan. On November 5 Baron Hayashi admitted " in confidence " to a press representative the substance of the notes. Before November 7, however, Japanese versions of the notes were circulated in Peking. (*U. S. For. Rels.*, 1917, p. 274.)

guson asserted that the Chinese characters used did accurately convey the idea of " special interests ".[53] Dr. Ferguson suggested, however, that the Japanese translation also might be interpreted to convey the idea of " special influence ". He made clear, however, that the Chinese Government, having the original texts in English, and having been confronted with the variations between the official Japanese and American translations into Chinese, made their own translation—which " agrees much more nearly with that made by the American legation ". Dr. Ferguson, however, emphasized that this matter of translation of the text had no official significance, " the English text being the official text as communicated to the Chinese Government ". All this may seem rather specious but, as Viscount Ishii points out in his memoirs, while the term " special interests " may convey in English something other than tangible property rights and the like, these overtones are not conveyed in Japanese by " tokushu-riyeki " but rather by " rigai-kankei ". The latter is equivalent to the Chinese " li-hai kuan hsi "—or, at least, is written with the same Chinese characters. It may be translated as " special interests ", but also as " special concern ".[54] Finally, it is noticeable that Lan-

[53] *Senate Documents, op. cit.*, p. 596. This was a repudiation of the previous testimony of Mr. Millard. (*Ibid.*, p. 444.)

[54] Dr. Reinsch, in his own memoirs, has stated that Baron Hayashi " evidently saw in the notes an endorsement of the principle of spheres of influence ". This is patently an exaggeration, on Dr. Reinsch's own testimony. He noted that Baron Hayashi explained

sing, in a later communication to Dr. Reinsch, used the term "a certain advantage" as synonymous with "special interests". This is exactly equivalent to the Japanese "tokushu-riyeki", which is the official Japanese translation of "special interests".[55]

"special interests" to mean such interests as were possessed by "several other countries" having territory that borders on China. He noted also that Baron Hayashi actually disclaimed an interpretation which would imply "paramount interest". The notes, he said, merely restated an "old position". Reinsch himself declared that "the non-official Japanese statements claimed much more than this". (*An American Diplomat in China*, pp. 310-311.)

[55] *Vide: Gaiko Yoroku*, Ch. VI, pp. 132, 147. The Chinese characters are "t'ê-pieh li-yi", "special" and "advantage". Mr. Thomas F. F. Millard has written that the Japanese and Chinese texts, submitted by the Japanese Minister to the Wai Chiao Pu at Peking, used the characters "li-yi" (Chinese pronunciation) to translate "special interests". He also noted correctly that the American version used the Chinese characters "kuan-hsi" instead of "li-yi". He then has stated that "the characters mean almost the same thing, yet with a distinction. As translated by the Japanese version 'special interests' indicate vested interests or proprietorship, something tangible. In the American version, 'special interests' mean merely a close or strong general interest in the welfare of China, not a particular or vested proprietary or paramount interest." (*Democracy and the Eastern Question*, p. 161.) As a matter of fact, the expression used by the Japanese was "tokushu-riyeki" in the Japanese pronunciation, or "t'ê-pieh li-yi" in the Chinese. The Chinese characters "li-yi" are not commonly used to mean "vested interests or proprietorship." They are most commonly used, and in a technical sense, to mean "advantage", or "advantages". If, however, they were used to connote "vested interests", that expression would have had correct technical application—inasmuch as Japan manifestly has vested proprietary interests in Manchuria. This is a technical economic expression, recognized in law. It does not connote a title to the soil. On the other hand, the characters "t'ê-pieh kuan-hsi", used in the American translation, do not necessarily connote the idea of "special interests": "kuan-hsi" is commonly used to mean "rela-

In view of these circumstances, arising especially out of the extreme difficulty of rendering English-language terminology—obscure in itself—into the fixities of the ideographs of the Chinese and Japanese languages, it perhaps would be only fair to conclude that far too much has been made of the assertion that the Japanese, officially or otherwise, by the mere use of particular ideographs in translating " special interests " have sought to place a different interpretation upon the term than has been conceded by the United States.

However this may be, it remains a fact that, as a matter of policy, Japanese officials in Mukden no doubt sought to influence the local Chinese officials to believe that the Lansing-Ishii agreement was a promise on the part of the United States not to interfere inconveniently with Japanese enterprises *vis-à-vis* the Chinese. The late Marshal Chang Tso-lin once remarked, when repudiating the intimation that he was " pro-Japanese ", that, after all, Manchuria was within the sphere where Japan's " special interests " had been recognized, and that, consequently, it was not for the American Government or others to censure him for making such concessions to Japan as he deemed advisable. Viscount Motono,

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tions ", " connections ", " implications ", hence, the entire expression means " special relations ", " special concern ". In the latter meaning, the American- translation into Chinese comes very close to being identical with the Japanese " rigai-kankei ", which is even stronger than the expression " tokushu-riyeki ", the official Japanese rendering.

Japan's Foreign Minister at the time the Lansing-Ishii agreement was negotiated, is known to have stated to the Russian Ambassador at Tokyo at the time that, if differences should arise in future as to the interpretation of the phrase " special interests ", Japan " would have at her disposal better means for applying in practice her interpretation, than would the United States ".[56] This was policy—good or bad—not an official interpretation.

Ambassador Roland S. Morris reported to Washington during November, 1917, that there was an evident tendency, even among Japanese officials to " interpret very broadly the definition of ' special interests ', and if possible to disconnect it from any geographical considerations ".[57] There was a tendency to discount the reaffirmation of the policy of the " open door " and a concurrent inclination to emphasize Japan's " special interests ". Dr. Senga, professor of international law in Kyoto Imperial University, however, regarded the Lansing-Ishii agreement as one of Japan's " most serious diplo-

[56] Pasvolsky, Leo. *Russia in the Far East,* pp. 168-169; *Senate Documents, op. cit.,* p. 231; Willoughby, *op. cit.* Vol. I., pp. 379-381.

[57] *U. S. For. Rels.,* 1917, pp. 271-272. Mr. W. H. Donald is represented by Dr. Reinsch to have said that when he saw the notes he "read into them the fact that America had, to use an Americanism, 'put one over' Japan. Ishii went to America to get acquiescence in Japan's predominance in China; to get America to admit Japan's hegemony of the Pacific. He got neither. Instead, he had to reaffirm adherence to the previous undertakings—undertakings which were discarded when Japan put in her twenty-one demands." (Reinsch, *op. cit.,* p. 312.) Dr. George Morrison, however, had misgivings.

matic failures", since "she should never have agreed to restrict her freedom of action in China by admitting the open door and equal opportunities", arguing that a Sino-Japanese entente against American and European activity in China would have been far more desirable. Dr. Suehiro, of the same institution, braved public censure and approved this step in the direction of abandonment of Japan's aggressive policy in China. Thus, as a matter of diplomatic policy, the Japanese Government naturally had broad discretion left to them to interpret the Lansing-Ishii agreement. Whether the policy actually pursued by the Terauchi Ministry during 1918 was reconcilable with the Lansing-Ishii agreement will be considered in the next section.

CHAPTER VIII

Japanese Loans and Options Concerning Manchuria: 1917-1918

In order to appreciate the problems which confronted the international bankers and their governments, during 1918-1920, in connection with the formation of the new International Banking Consortium, and their efforts to prevent the Japanese group from excluding Manchuria from the scope of operations of that consortium, some attention needs here to be given the activities of Japanese bankers, with the support of their government, in connection with loans and options pertaining to Manchuria during 1918. This was the period during which the unconscionable activities of one Mr. K. Nishihara, once a member of the board of directors of the Bank of Chosen and, at that time, the personal representative in China of Premier Count Terauchi, left a heritage of currency reform, reorganization, railway and " industrial " loans, certain of which are well known to have been advanced with the full understanding that they were to be immediately squandered by a military clique in control in Peking. The problem of passing judgment upon the question of valid options and China's legitimate obligations to repay such loans is, in consequence, no small one. Fortunately, the latter, at least, will not have to be

attempted here.[1] Our concern is solely with such of the loans and advances as had application to Manchuria. Not all the loans here to be considered were negotiated, however, by Mr. Nishihara. The more regular activities of the Yokohama Specie Bank and the South Manchuria Railway Company will first be considered.

In 1913 the Japanese Government had obtained from China, by virtue of a secret exchange of notes, dated October 5, the right to finance the construction of five railways in Manchuria, three to be connecting lines of the South Manchuria Railway. One of these was the Ssupingkai-Chêngchiatun railway project.[2] Although this agreement has generally been known as the " Five Manchurian and Mongolian Railways Agreement ", it is to be noted that one of these projects, above mentioned, was later excluded and dealt with separately. The final loan contract for the Ssupingkai-Chêngchiatun branch from the South Manchuria Railway was signed on December 27, 1915, by the Yokohama Specie Bank and the Chinese Government.[3] This line, which has subsequently

[1] The greater part of the "Nishihara loans" was taken over by the Japanese Government by Diet action in 1926.

[2] *Vide:* Young, *The International Relations of Manchuria,* p. 74. Text in MacMurray, Vol. II, p. 1054. *U. S. For. Rels.,* 1918, p. 132.

[3] MacMurray, Vol. II, p. 1249. Young, *op. cit.,* p. 140. When this loan agreement was signed, the Yokohama Specie Bank advanced a loan of 5,000,000 yen to the railway. In February, 1918, an additional advance of $2,600,000 (Mex.) was made by the bank. (*General Outline of a Policy for Sino-Japanese Friendship and Economic Coöperation,* Published, in Japanese, by the Japanese Ministry of Finance, June, 1918.)

been constructed, even beyond Chêngchiatun (with a branch to Paiyintalai) to Taonan and to Tsitsihar —which, in reality, is now operated by three distinct railway administrations, all Chinese Government railways—traverses an area in western Manchuria which would have been served by the proposed Chinchow-Aigun railway, in which American and British interests were in 1910 involved.[4] Inasmuch, however, as the American and British interests were not eager to press their claims at this time, there was no strong objection to Japanese financiers undertaking to provide for the construction of these railways with Japanese capital.[5]

During 1917 the South Manchuria Railway Company, in pursuance of an article in the Sino-Japanese treaty of May, 1915, which pledged China to permit a fundamental revision of the early loan agreement of 1908, signed with the Chinese Government an agreement, dated October 12, which transferred the operation of the Kirin-Changchun railway to the South Manchuria Railway Company.[6] The responsi-

[4] In view of this and other circumstances, the United States Government, through the American Minister in Peking, on October 13, 1916, reserved the rights accruing to the American financial group under the agreement of October 2, 1909 (*Vide:* Ch. III.)

[5] For the details of the loan contract agreement, see the writer's volume, *The International Relations of Manchuria,* p. 140. The interests of the Yokohama Specie Bank in this line have since been taken over by the South Manchuria Railway Company, and there are loans still outstanding, unpaid by the Chinese railway administration. Actual management of these lines is in Chinese hands.

[6] MacMurray, Vol. II, p. 1390. The agreement provided that the S. M. R. Co. would henceforth "direct the affairs of the railway";

bility for operation was to continue for a period of thirty years (to 1947), during the currency of the loan of 6,500,000 yen (including arrears already accrued amounting to 1,980,750 yen), which was at that time advanced by the South Manchuria Railway Company, the railway property and receipts being security for the loan. This line remains a Chinese Government railway, but under the effective supervision of the Japanese, the South Manchuria Railway Company receiving 20% of the net profits. Under these circumstances, this was one of the lines later specifically excluded from the scope of the loan operations of the International Banking Consortium, formed during 1918-20.[7]

With the inauguration of the Terauchi Ministry on October 9, 1916, the Japanese Government launched a "positive financial and economic policy" with respect to China, manifested by loan operations, reorganization of Japanese banks operating in the field, and creation of new Sino-Japanese media, which resulted in the placing of more loans in China in one year than had previously been placed in the entire history of Sino-Japanese relations. Of particular bearing on Manchuria, were the following steps: the reorganization of the Yokohama Specie

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three Japanese directors were to be in charge of "General Affairs", "Traffic" and "Accounting". The right to police the line was left to the Chinese Government. The South Manchuria Railway Company took over operation of the line on January 6, 1918.

[7] For the early history of this railway's financing, see: *The International Relations of Manchuria*, p. 141.

Bank, in such a way as to deprive it of certain of its loan functions and its rôle as a depository of treasury notes; the transference of these special loan functions to the reorganized Oriental Development Company (November 1, 1917), the latter having its capitalization increased to Yen 20,000,000 and, being authorized especially to further Japanese colonization projects in Manchuria and Mongolia; the reorganization of the Bank of Chosen thenceforth to be the principal bank for general loan operations with the Chinese Government in connection with Manchuria, this bank to be the sole bank of issue for Japanese gold yen notes in Manchuria, the same to be used exclusively by the South Manchuria Railway Company and the Kwantung Government with the object of encouraging the general adoption of the Chosen notes as a currency standard in Manchuria. Other steps taken to this general end were the reorganization of the Industrial Bank of Japan, with a provision for government guarantee of its debentures up to Yen 100,000,000; the organization of a syndicate of Japanese bankers for loan operations in China; and the organization of the Sino-Japanese Exchange Bank (Exchange Bank of China), this to be incorporated (chartered January, 1918) under Chinese law, and to have both nationalities represented in its directorate, under a Chinese president and a Japanese managing director.[8]

[8] The above account has been based on the following official publication of the Ministry of Finance, during the Terauchi Ministry,

During 1918, the operations of Japanese banking groups with respect to Manchuria—as in China generally—were colored, in very large measure, by the unscrupulous activities of Mr. K. Nishihara, who negotiated the famous "Nishihara Loans" with a Chinese military junta in Peking with full knowledge that a large part of the actual advances made were to be used for other than the purposes for which they were ostensibly designated, and were to be appropriated for political, military and private purposes. No impartial analysis of the question of such options to railways and industrial enterprises as Japan acquired in Manchuria during 1918 can be made without some careful attention to the rôle of the mysterious Mr. Nishihara, who, in fact, was responsible for practically all the loan negotiations applicable to Manchuria at that time.

Mr. Nishihara Kamezo was sent to China as the personal representative of Premier Count Terauchi, who, in turn, as well as Mr. Nishihara, was personally interested in the Bank of Chosen. The loan contracts negotiated during 1918, which were formally signed, on the part of the Japanese, by the Bank of Chosen, the Industrial Bank of Japan and the Bank of Taiwan, are those which were negotiated by Mr. Nishihara. Many of these loans were actually in competition with, or over the protest of, the Yoko-

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1918: *General Outline of a Policy for Sino-Japanese Friendship and Economic Coöperation.* Published by the Japanese Ministry of Finance, June, 1918. (In Japanese.)

hama Specie Bank, which was a member bank in the Six-Power Consortium of 1912.[9] The Japanese Minister at Peking, Baron Hayashi, was, therefore, not in a position to know the nature of all of the manifold and mysterious activities of Mr. Nishihara, the legation at times rather favoring loan operations on the part of the Yokohama Specie Bank. Under such circumstances, it was but natural that the subterranean methods used by Mr. Nishihara should have incurred the suspicion and the ill-will of the ministers of Great Britain, France and the United States, who, during 1918, were favorable to the organization of a new consortium for Chinese loan activities. Instead of dealing with Mr. Liang Shih-yi, with whom the Yokohama Specie Bank had connections, Mr. Nishihara operated through Mr. Ts'ao Ju-lin, Minister of Finance, and Mr. Lu Chung-yu, president of the Sino-Japanese Exchange Bank. Mr. Tsao was notoriously "pro-Japanese" and a supporter of the military clique then in power under the premiership of Tuan Ch'i-jui.[10] North and South were at this time divided, and it was well known that many of the advances made by Mr. Nishihara were

[9] *U. S. For. Rels.*, 1918, p. 132. *Far Eastern Review*, Sept., 1918, p. 362; *Millard's Review*, Aug. 24, 1918; *Japan Weekly Chronicle*, June 20, July 4, 1918.

[10] *U. S. For. Rels.*, 1918, p. 102. The publication of the Japanese Ministry of Finance, cited above, contains the following statement: "Since the present cabinet [Terauchi] came into existence, political conditions in China have been most disquieting, which made it difficult to make investments in China, and, therefore, rendering it necessary to adopt a policy that was secret and shrewd."

immediately diverted to military ventures against the South.[11]

Turning, then, to the actual loan contracts negotiated by Mr. Nishihara, in behalf of the Bank of Chosen and its associates, it is evident that, out of the many loans he negotiated in Peking during 1917-18, only four have direct application to Manchuria. These were the following: (1) the Kirin-Huining railway preliminary loan agreement of June 18, 1918; (2) the so-called "Four Manchurian and Mongolian Railways Agreement" of September 28, 1918; (3) the Bank of Chosen loan of 3,000,000 yen of April 22, 1918, to the Fêngtien provincial government; and (4) the notorious Kirin-Heilungkiang

[11] *U. S. For. Rels.*, 1918, pp. 102, 112, 123, 131. These circumstances were well-known in Japan, and incurred the criticism of members of the Diet and certain press circles. Count Terauchi's relations with Nishihara were the subject of criticism in the Diet as early as 1917. (*The Japan Weekly Chronicle*, July 4, 1918.) Mr. Ozaki Yukio openly declared that the Terauchi Government "had been in the habit of furnishing the North with arms and war funds, while expressing a wish that domestic commotion in China will come to an end as quickly as possible". (*Ibid.*, June 20, 1918.) The more liberal sections of the press in Japan, including the Osaka *Asahi*, denounced the Government for its policy of fomenting disorder in China with illegitimate loans, dubbed "industrial" or "reorganization" loans. Mr. M. Zumoto, the courageous editor of *The Herald of Asia* protested that Mr. Nishihara's activities in China had "not tended to enhance either the prestige or credit of the Empire in the eyes of the world". (*Millard's Review*, Aug. 10, 1918, p. 413.) It was widely recognized that Nishihara was openly seeking to influence the Chinese Government and his own to oppose the formation of the new consortium. In this he had the support of Tsao Ju-lin, the Chinese Minister of Finance.

gold mining and forestry agreement of August 2, 1918.

The project for a railway from Kirin City, the capital of Kirin province, to Huining,* a city on the Korean side of the Manchurian-Chosen border, which has so far been realized only in part with the completion of the construction of the Kirin-Tunhua railway in 1927,[12] was first made the subject of agreements with the Japanese Government in 1907 and 1909. No specific and detailed loan contract agreement for the construction of such a railway, however, was negotiated until 1918. On June 18, the Bank of Chosen, and its associates, the Industrial Bank of Japan and the Bank of Taiwan, obtained a specific contract for the construction of such a line between Kirin and Huining.[13] This was in the nature of a preliminary loan contract agreement, the total construction cost and the loan to meet the same not being specifically mentioned.[14] Even a cursory study of this contract reveals certain extraordinary features. As a contract, it is decidedly incomplete: no total loan figure was mentioned, and no details as to the service of individual blocks of the bonds were included. There was, furthermore, a provision for an

* *Kainei,* in Japanese; *Hoiryong,* in Korean.

[12] *Vide:* Young, *The International Relations of Manchuria,* p. 142.

[13] MacMurray, Vol. II, p. 1430. Young, *op. cit.,* p. 143.

[14] This preliminary contract did, however, fix the interest, and provide for redemption of the loan bonds forty years after the date of the initial issue. The property and potential earnings of the railway were designated as the security.

immediate advance of Yen 10,000,000, to be paid to the Chinese Government upon the conclusion of the agreement. So far as any official explanation of this advance has ever been made, it is evident, as stated in an official report of the Chinese Minister of Communications, June 29, 1918, that "in pursuance of this condition, $10,000,000 (yen?) were paid into the Tokyo office of the Sino-Japanese Exchange Bank on the nineteenth of June, to the credit of the Peking Government, who are at liberty to use it without condition".[15] In other words, the sum of Yen 10,000,000 was given to the military clique in Peking to use for such purposes as they saw fit.[16] This was one of the

[15] MacMurray, Vol. II, p. 1432. The contract provided that, only in case foreign capital were to be required for the construction of such a railway, were the Chinese obligated to borrow money from the Japanese. In other words, the Chinese Government were, under the strict terms of this agreement, still within their rights if they chose to build the line with their own capital.

[16] "Our banks advanced Yen 10,000,000 on this loan." (Japanese Ministry of Finance Statement, cited above, dated June, 1918.) This Japanese official statement also notes as follows: "There are also agreements in the contract in regard to facilitating transportation along this and the Korean railways. The completion of this railway will result in benefit to both the Korean railways and this railway itself, for it will develop northern Manchuria and link up Manchuria and Korea."

Mr. J. V. A. MacMurray, American *Chargé d'Affaires* in Peking, in his quarterly report to the State Department on conditions in China, covering July–September, 1918, reported this contract to the department and made the following statement: "Although the country through which the Kirin-Huining line would pass is almost unknown, there is some reason to believe that the railway would have a commercial, as well as a strategic value. It is to be regretted, however, that this otherwise legitimate project is saddled with the advance of

so-called " Nishihara Loans ", the transaction having been negotiated by Mr. Nishihara and Ts'ao Ju-lin, then Minister of Finance for the Tuan Ch'i-jui military junta, the advance having been made to the Sino-Japanese Exchange Bank of which Mr. Lu Chung-yu was president.

Whatever the ulterior motives involved in offering this actually unsecured and uncontrolled advance of 10,000,000 yen to the Tuan faction in Peking, there exists, at least, the preliminary contract which constitutes a prior option to finance such a railway, in case the Chinese Government should ever desire to have foreign capital participate in its financing. This factor, and probably of more importance, the fact that such a railway would have unquestioned strategic importance for Japan, counselled the various national banking groups in 1919 to approve the Lamont proposals that the line be excluded from the scope of proposed operations of the consortium. Japan had actually obtained certain commitments as early as 1907 and 1909 looking toward the financing of such a line. The subsequent developments in connection with the proposed construction of such a line may now be briefly sketched.

On October 24, 1925, Mr. Y. Matsuoka, then a director of the South Manchuria Railway Company,

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yen 10,000,000, which has already been spent for military purposes." (*U. S. For. Rels.*, 1918, p. 131.) The late Mr. Bertram Lennox-Simpson, who published a list of Japanese loans to China during 1918, gave the total of this advance as Yen 20,000,000. This is in error. (*The Truth about China and Japan*, p. 178.)

signed with Yeh Kung-ch'o, Chinese Minister of Communications, a final construction contract for the first section of such a line—the Kirin-Tunhua railway.[17] Actual construction began in 1926, the line having been completed on October 10, 1928. The agreement provided for a loan of Yen 18,000,000 (later increased to Yen 24,000,000) to be advanced by the South Manchuria Railway to cover construction costs, the same to be paid after the completion of construction, and, failing this, to constitute a loan at 9% for thirty years, the same to be secured on the annual proceeds and the line itself. During the currency of the loan, or any portion of it, a Japanese chief accountant was to be employed by the railway administration, the line itself, however, to be under the control of the Chinese railway administration.

This contract of 1925, however, did not apply to the proposed extension beyond Tunhua to the Chosen border. It appears that, just previous to the evacuation of Peking by the late Marshal Chang Tso-lin, in June, 1928, the Japanese Government pressed for the signature of such a final and definitive contract

[17] The fact of the conclusion of this contract was at once reported in the Peking press, but no official version of the contract was published at the time. In 1929 the author obtained from the Head Office of the South Manchuria Railway in Dairen a statement of the provisions of this contract, which he published in: *The International Relations of Manchuria*, pp. 213 ff. The late Marshal Chang Tso-lin was in control in Peking when this contract was negotiated. Upon his evacuation, the new government, on January 7, 1926, formally repudiated the agreement. Japan protested, and, when a new cabinet came into power in Peking, the contract was reaffirmed.

for the completion of the line to Chosen. An agreement for such a railway, along with one from Changchun west, seems to have been signed during May. This, however is admittedly a questionably valid contract, as it was exceedingly irregular, apparently having the " chop " of Marshal Chang Tso-lin, without his signature, having the signature of the Vice-Minister of Communications, instead of the Minister himself, and possessing other irregular features. During the period from 1928 to 1930 the Japanese Government evidently pressed for a new and regular contract to replace the one of May, 1928, but without success, the Mukden Government, under the headship of Marshal Chang Hsueh-liang being strongly opposed to the granting of such a contract to the Japanese. The Chinese regard the construction of such a line with Japanese capital as prejudicial to the very political integrity of China in Manchuria.[18]

Reverting, then, to the other railway loan contracts obtained from the Peking Government in 1918, attention may be drawn to the so-called " Four Manchurian and Mongolian Railways Agreement " of September 28, 1918. This originally included the Ssupingkai-Chêngchiatun railway line, which was

[18] The Kirin-Tunhua railway contract agreement of 1925 and the Taonan-Angangchi railway contract agreement of 1924, are the two principal contracts obtained by Japanese financial interests for Chinese railway construction in Manchuria since the Washington Conference. (*Vide:* Young, *op. cit.*, pp. 209-215, for further details; and Appendix F, p. 278, for independent Chinese railway construction.)

subsequently dealt with through a separate loan contract by the Yokohama Specie Bank. In 1913 the Japanese Government by an exchange of notes had obtained for Japanese financiers the prior right to finance the construction of five railways in Manchuria,[19] of which one was a projected line from Changchun—the junction of the South Manchuria Railway and the Chinese Eastern Railway—to Taonan, in western Manchuria.[20] No specific loan contract had, however, been signed for their construction. On September 28, 1918, the Chinese Minister at Tokyo signed with the Industrial Bank, the Bank of Chosen and the Bank of Taiwan, a preliminary loan agreement, by which the Chinese Government, then represented by the military government of Premier Tuan Ch'i-jui in Peking, conceded the right to these Japanese firms to finance the construction of four named railways in Manchuria.[21]

With reference to these options, Mr. J. V. A. MacMurray, while American *Chargé d'Affaires* in Peking during Dr. Reinsch's absence, in the summer of 1918, reported to the State Department that, of these, the railway from the proposed Taonan-Jehol line was " perhaps in conflict with the existing rights of British interests in respect to branch lines of the

[19] These were the following: Ssupingkai-Chêngchiatun ry., Kaiyuan-Hailungchêng ry., Changchun-Taonan ry., Taonan-Jehol ry., and the Kirin-Hailungchêng ry.

[20] MacMurray, Vol. II, p. 1054.

[21] *Ibidem*, p. 1448.

Peking-Mukden Railway ".[22] The contract provided that an advance of Yen 20,000,000 should be made the Chinese Government, without restriction as to its use. The associated Japanese banks were to be permitted to " raise all the funds required for the building " of the four named railways, the same to become a loan repayable to the bankers out of a subsequent issue of a public loan. This contract, though admittedly but " preliminary ", had all the earmarks of an irregular transaction: its contract provisions are inadequate as to financial matters, the amount of the loans subsequently to be required, service of these loans, etc.; while the initial Yen 20,000,000 advance was unconditional as to the use which the Peking Government might choose to make of it. It did involve, however, a statement of distinct options for four railways, as follows: a Taonan-Jehol railway, one from Changchun to Taonan, another from Kirin to Kaiyuan, and a railway from a point on the pro-

[22] *U. S. For. Rels.*, 1918, p. 132. Before this time, the construction of Hulutao harbor had been begun by British engineers, large outlays of funds having been advanced through the Peking-Mukden railway administration. The signing of this contract secretly in Tokyo by the Chinese Minister, acting under instructions, not from the Minister of Finance, but from the Minister of Communications, aroused great opposition in China. The railways proposed, especially the Taonan-Jehol line and the line from it to the sea at Hulutao, were considered as endangering the very political integrity of China. Jehol lies but a short distance north of Peking. No final agreement was, therefore, signed, though it had been anticipated that one would have been negotiated within four months after September, 1918. These lines have never been built. Hulutao harbor is now being constructed by the Chinese under a construction contract with the Netherlands Harbor Company of Amsterdam.

posed Taonan-Jehol line to the seacoast, apparently at Hulutao. These options, however, were never implemented—except for the Kirin-Kaiyuan railway—either by a formal loan contract agreement, or by subsequent actual construction. Consequently, particularly in view of the obvious misappropriation of the funds actually advanced in 1918, and on account of the "political" character of these negotiations with a military clique in Peking, they were not considered as entirely preëmptive by the Japanese Government. During the negotiations attending the formation of the new International Banking Consortium in 1918-20, the Taonan-Jehol line, and the line from it to the seacoast, were eventually included within the scope of proposed operations of the consortium. This was not, however, until after considerable Japanese insistence that they be excluded.

The most criticized of the activities of Mr. K. Nishihara pertaining to Manchuria, however, was the contract he negotiated which has since become known as the "Kirin and Heilungkiang Gold Mining and Forestry Agreement". This was signed on August 2, 1918—after initial arrangement accomplished by Mr. Nishihara—by Ts'ao Ju-lin, Minister of Finance, and others on the Chinese side, and by Mr. T. Kakiuchi, managing director of the Sino-Japanese Exchange Bank.[23] On its face, this "loan

[23] MacMurray, Vol. II, p. 1434. Cf. Coons, A. G. *The Foreign Public Debt of China*, p. 85. In this work the statement is made: "The loan was made for the purpose of mining and forestry devel-

agreement " was an " industrial ". In fact, it was a means for concealing a transaction which had for its object the offering of Japanese funds to support the Tuan Ch'i-jui military junta in Peking. Mr. Ts'ao Ju-lin, who negotiated the agreement, made the statement subsequently that this so-called gold mining and forestry loan agreement was made for the sole purpose of raising money to carry on the government, especially in connection with a military campaign against the South, and that the agreement was dubbed an " industrial loan " to evade the stipulations of the Chinese Government's agreements with the Six-Power Consortium bankers.[24] The agreement provided for an advance of Yen 30,000,000 to the Chinese Government, the same to be repaid after a period of ten years. As security, " the gold mines and national forests in the Heilungkiang and Kirin provinces ", as well as the " government's revenue from the said gold mines and national forests ", were designated. An additional clause provided that, in case the Chinese Government in future desired to make an additional loan on this security, these Japanese banks should first be consulted. In a subsequent exchange of notes, it was stipulated that Japanese experts should be engaged " to assist in and

opment in those areas." It would be more correct to say that it was understood on both sides that the loan was not to be used for that purpose, exclusively, if at all. Dr. Coons correctly classifies these " Nishihara loans " as " doubtfully secured " or entirely " unsecured ".

[24] *Far Eastern Review*, Aug. 1918, p. 336. Communication of Tsao Ju-lin to Mêng Ên-yuan, governor of Kirin province.

perform the business of " the offices in charge of administering the gold mines and forests of these two provinces.[25]

Aside from the obvious misappropriation of the advance of Yen 30,000,000—not one yen of which has, apparently, ever been used for the purposes stipulated in the " loan agreement " for " gold mining and forestry " in Manchuria—it was obvious at the time that the agreement was highly prejudicial to the maintenance of the political and administrative integrity of China. Here was a blanket concession by which very important national revenues, and the development of fundamental natural resources of the state, were with one stroke actually sacrificed in favor of a foreign banking syndicate—a syndicate, moreover, which, on account of the intimate relationship between government and banking in Japan, was actually a semi-official organization.[26]

Furthermore, a group of facts supports the assertion that this particular " loan agreement " was violative of the policy of equal opportunity in Manchuria, and actually in conflict with the former pledges of both the Chinese and Japanese governments. This was pointed out by *Chargé* MacMurray to the State Department in his communication to the Department of State, July 27, 1918, in which he drew

[25] MacMurray, Vol. II, p. 1437.

[26] The truth of this assertion is also obvious from the fact that, inasmuch as none of these " Nishihara loans " were repaid by the Peking Government, they were eventually actually taken over by the Japanese Government, by action of the Diet.

attention to Articles 8 and 9 which, as he said, established an "effectively exclusive right of working the forests and gold mines in the two northern provinces of Manchuria ".[27] These articles provided for exclusively Japanese financial participation in all future loans for the development of these basic resources in Manchuria. This, as Mr. MacMurray pointed out, was " an apparent endeavor to establish such a monopoly as was repudiated by both the Japanese and Chinese Governments in the case of the agreement concerning mines and railways in Manchuria in 1909 ".[28] Upon making inquiries from the Chinese Foreign Office on this point, Mr. MacMurray received only evasive replies, and was finally refused an authentic copy of the agreement itself.[29]

[27] *U. S. For. Rels.*, 1918, p. 162.

[28] This refers to the Sino-Japanese agreement of September 4, 1909. (MacMurray, Vol. I, p. 790), concerning mines and railways in Manchuria. On the protest from the American Minister in Peking, the Chinese Government had declared on November 18, 1909, that this agreement did not mean the establishment of a monopoly in favor of Japanese financiers, " but that mines in the territory mentioned may with the consent of the Chinese Government be exploited by third parties also ". On November 25, the Japanese Government also repudiated the assumption that the 1909 agreement established an exclusive monopoly in their favor, stating that its provisions " do not and were not intended in any way or to any extent to involve a monopoly of the right to discover, open, and operate mines in Manchuria, to the exclusion of citizens of the United States, or any other persons ". (*U. S. For. Rels.*, 1909, pp. 116-124.) It was this agreement which contributed to cause the so-called " Crane Incident " of 1909. (*Vide: Ibidem*, 1918, pp. 131, 162.)

[29] *U. S. For. Rels.*, 1918, p. 165. Mr. MacMurray's report on this subject to the Department of State is pertinent here: " The Kirin forestry loan created intense indignation in the two provinces con-

Finally, to complete the picture of the machinations of notorious Mr. Nishihara in so-called " loan negotiations " with bearing on Manchuria, mention may be made of an agreement of April 22, 1918, by which the Bank of Chosen advanced a sum of Yen 3,000,000 to the Fêngtien provincial government.[30] This was declared in the agreement to be for the purpose of " readjustment of the reserve of the Provincial Government Bank of Manchuria ". It was, however, to be secured on " all the shares held by Fêngtien Province in the Penhsihu Colliery Company "—a Sino-Japanese enterprise, organized under an agreement of May 22, 1910, by which the Japanese firm of Okura and Company was made actually responsible for the operation of these important coal mines.[31] The background of this Nishihara agreement, briefly, was this. The finances of the province had been for some time in a precarious

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cerned, whose people felt that the Government was literally selling their resources and encouraging the encroachments of Japan, with no idea of developing the lumbering or mining industries, but solely for the purpose of obtaining immediate funds for military expenses. This feeling was intensified by the publication in the Peking press of a memorandum, intended to be secret, with which this contract was submitted to the Cabinet by Mr. Ts'ao Ju-lin, boldly stating that the Government needed the money and that to get it he had been compelled to adopt the subterfuge of making a loan for nominally industrial purposes from the Nishihara group, inasmuch as the avowal of the fact that the money was for political purposes would lead to difficulties with the consortium and with foreign Governments whose nationals participated therein. The authenticity of the memorandum was never denied." (*U. S. For. Rels.*, 1918, p. 131.)

[30] MacMurray, Vol. II, p. 1416. *U. S. For. Rels.*, 1918, p. 133.

[31] *Vide: The International Relations of Manchuria*, p. 79.

state; reckless issues of irredeemable fiat bank notes had flooded the province, these being based, ostensibly, on the " small-coin dollar " which had much depreciated in value. Loans had repeatedly been made from Japanese banks locally to redeem these issues, encouraging speculation on exchange and the exportation of Chinese silver. This new loan of 1918 was to facilitate the further redemption of these badly depreciated provincial notes. An accompanying agreement, however, obligated the provincial treasury to guarantee the redemption of these " small coin " notes for Japanese holders at a rate of exchange as much as 50% above the current market rate. This operated to drive non-Japanese foreign firms out of business in the areas affected, or forced them to use Japanese gold yen notes in railway towns where the Bank of Chosen had introduced them. Summarizing this situation, Mr. MacMurray's report on the subject to the State Department, written in September, 1918, stated that " both the American and British Governments were compelled to notify the Chinese Government that they must hold it responsible in damages for the losses of their nationals in consequence of this discriminatory arrangement; but even the payment of all direct claims on this score could scarcely compensate for the far-reaching effect of making southern Manchuria almost a closed field for foreign commercial enterprise ".[32]

[32] *U. S. For. Rels.*, 1918, p. 133.

From this body of colorful loan negotiations, conducted especially by Mr. K. Nishihara in behalf of the Bank of Chosen during 1918, there emerged the various railway and " industrial " options analyzed above. In a later chapter, we shall have occasion to consider their bearing on the formation of the new International Banking Consortium, and Japan's claims to a " special position " in Manchuria.

CHAPTER IX

Japan's Claims to a Special Position in Manchuria: 1918-1922

1. The International Banking Consortium Negotiations: 1918-1920. Although Viscount Ishii had failed in 1917 to secure recognition from the United States of Japan's claims either to "paramount interests" or to "special interests and influence" in Manchuria, the Japanese Government had supported their bankers—which are, especially in the case of such banks as the Yokohama Specie Bank, actually semi-official organizations—in their independent operations during 1917-18, with the result that Japanese financiers had acquired a large number of new options to railway and industrial loans in Manchuria.[1] The principal of these have been considered in the previous chapter. The Great War had diverted the attention of the financial groups of the United States and of European countries from Chinese loan enterprises, leaving the field to the Japanese.

[1] Viscount Ishii frequently refers to Japan's "sphere of influence" in Manchuria in his autobiography, *Gaiko Yoroku* (*Notes on Diplomacy*). In Chapter VI he declares that, after his first conversation with President Wilson in September, 1917, he cabled his government recommending a declaration abolishing such claims to a "sphere of influence" anywhere in China. His government, he records, failed to accept his proposal and he was left without instructions on the point.

New circumstances, however, favored the renewed participation of western financial groups in loan enterprises in China. There was, for example, a wide conviction that, if the field were to continue to be exploited only by the Japanese, it would be exceedingly difficult, after the coming of peace in the West, for them to enter the loan field in China.[2] There was, also, a desire on the part of the American Government to counteract false impressions as to American policy in China which had been spread as a result of the negotiation of the Lansing-Ishii agreement of 1917.[3] The continuation of the Great War made any active interest in loan operations in China impossible on the part of Great Britain and France, and thus only Japan and the United States were left to carry the burden of making actual advances in case a new international consortium arrangement seemed feasible. This was the situation when the late Mr. Robert Lansing, Secretary of State, outlined a plan

[2] On February 11, 1918, Minister Reinsch telegraphed that, in view of the movement of the Anfu faction, with Japanese financial support, to displace President Fêng Kuo-chêng, "special attention to the Far Eastern situation is urgently required". (*U. S. For. Rels.*, 1918, p. 84.) "The Southern leaders have protested to Japan against loans to the Peking Government." (*Ibid.*, p. 87.) In the latter part of February, 1918, the troops of General Chang Tso-lin of Manchuria invaded the territory south of the Great Wall, being equipped with arms and munitions purchased from the Japanese. In April, 1918, Minister Reinsch, in his report on conditions in China, stated, *inter alia*, that "the Japanese Government has chosen this time for an attempt to establish ascendency of Japanese influence in Chinese affairs". (*Ibid.* p. 91.)

[3] *Ibidem*, p. 93.

for President Wilson urging the formation of a new consortium to undertake loan operations in China.[4]

In Secretary Lansing's proposal to the President, dated June 20, 1918, he suggested that all prior options of American banking firms in the Chinese field be pooled in a newly formed banking group which would be widely representative of financial interests of the country, and stated that, in view of the change of circumstances in China from those which existed at the time of American withdrawal from the Six-Power Consortium in 1913, it was considered highly desirable for American and Japanese banking groups to carry the British and French groups for the time being.[5] President Wilson agreed to give support to the private bankers involved on condition that they did not undertake " such unconscionable arrangements " as were, in his view, contemplated by the Six-Power group in 1912-13. On June 26 a conference of State Department officials and various

[4] *Ibidem,* p. 169.

[5] Secretary Lansing's memorandum to President Wilson also contained the following statement: " China has expected some financial assistance from the United States. Japan has made her many loans recently. We have made none. It was at our invitation she entered the war, and it is to us that she is looking for some financial help to guard against possibilities now that the scenes of war are nearing her borders. The indications are that her disappointment at not receiving what she has felt she had reason to expect has made her somewhat resentful against this country. If we are able to give permission to American banks to make the loans in connection with the tobacco tax and with the railroad, and to coöperate with Japan on the question of currency reform, it will be pleasing no doubt both to China and Japan." (*U. S. For. Rels.,* 1918, p. 171.)

American bankers was held in which American-Japanese coöperation was urged. The bankers, however, urged the inclusion of the British and French banking groups, expressing their willingness to carry them in current loans for the time being.[6] It was felt that such a combination might serve to preserve an "open door" by insuring equality of participation in financial operations in China, and at the same time safeguard the integrity of China by provisions which would insure the use of her revenues for constructive purposes. On July 9 Secretary Lansing offered the government's support to a new plan to include this four-power group.[7]

This proposal for a new international banking consortium, to include American, Japanese, British and French financing groups, was communicated *mutatis mutandis* to the Japanese, British and French ambassadors at Washington on July 10, 1918.[8] On

[6] *Ibidem,* pp. 171-173.

[7] *Ibidem,* p. 174.

[8] At this juncture, Mr. J. V. A. MacMurray, American *Chargé d'Affaires* at Peking, sent a telegram to the Department of State in which he declared as his opinion that "in the present circumstances only a momentary catchpenny advantage could result from an independent effort of American interests to make loans in competition with Japanese, unless wholly and genuinely for the purpose of productive industrial enterprise". He urged a coöperative policy. He suggested that the consortium also include industrial loan operations. (*Ibidem,* p. 186.) Replying to this telegram, the Secretary of State stated, *inter alia,* that "the Japanese here in discussing the proposal show an unwillingness to have industrial loans included and are evidently trying also to influence Great Britain and China to declare against their inclusion". (*Ibidem,* p. 188.)

August 26 Ambassador Roland Morris at Tokyo telegraphed that, while the Japanese Government were in favor of the proposed new international banking consortium, they desired to know whether, among other things, the suggestion for pooling prior options meant to raise a question as to such options as were held by the Yokohama Specie Bank for railways in Manchuria, and whether the consortium were also to undertake industrial loans.[9] Secretary Lansing then explained that " relinquishment of all options " applied only, as far as the United States Government were concerned, to prior options held by American banking groups under former contracts with China. Industrial loans were, he said, to be included under the plan.[10] In pursuance of these preliminary negotiations, therefore, the banking groups of the four interested states met in conference in Paris in May, 1919, and formed the so-called International Banking Consortium.

On May 31, 1919, the American State Department sent identic notes to the Japanese, British and French embassies in Washington acknowledging the resolutions adopted by the bankers at their Paris meeting on May 12, and thus officially launched the international banking consortium. Great Britain promptly accepted the plan.[11] From that time until

[9] *Ibidem,* p. 191.

[10] *Ibidem,* p. 197. Lansing to Morris, October 8, 1918.

[11] *The Consortium* (The Official Text of the Four-Power Agreement for a Loan to China and Relevant Documents), p. 18. Pub-

the summer of 1920 the formal organization of the international banking consortium was delayed by the attempts, on the part of the Japanese banking group and their government, to limit the operations of the consortium by obtaining consent to a complete exclusion of Manchuria from the scope of its operations. It was the assertion of these claims to a special position, with " special rights and interests ", in Manchuria which was the rock on which the consortium was all but wrecked, even before its formal organization.

For various reasons these negotiations are, in themselves, of no small importance. The negotiations are, in fact, from a legal point of view, far more important in respect to Manchuria than the actual subsequent operations of the consortium.[12] They give testimony—than which no diplomatic negotiations of the period are more illuminating—to the exact nature of the claims which the Japanese Government sought to assert with respect to their special position in Manchuria. Judged by the subsequent

lished by the Carnegie Endowment for International Peace, Washington, D. C., 1921. This volume contains a very complete account of the exchanges of correspondence which attended the formal organization of the consortium, and gives the full texts of the communications in which the Japanese banking groups and their government set forth claims to a special position in Manchuria.

[12] A similar view was expressed by the editors of *The Nation* (N. Y.) immediately after the conclusion of the final consortium agreement. " The negotiations leading up to the signing of the China Consortium Agreement on October 15, 1920, were in many respects more significant than the terms of the agreement itself." (*The Nation*, June 1, 1921, p. 799.)

activity of the International Banking Consortium in Manchuria after 1920, there may be some justification for the statement that the consortium was " still born ": it never financed a railway or any other industrial undertaking in Manchuria. There is, however, little if any justification for calling it in journalistic language, an " excellent comedy " or an example of futile chicanery ". Nor is there evidence to support the assertion that the negotiations preliminary to the signing of the formal consortium agreement in 1920 included " a gentlemen's agreement, binding the British and American Governments, to exclude Manchuria in practice, though including it in theory ", from the operations of that consortium.[13]

[13] The quotations in the above paragraph are from an editorial book review by Mr. A. Morgan Young, editor and publisher of the *Japan Chronicle,* Kobe, Japan, November 6, 1929. This captious critic cites the statements of Mr. Kajiwara of the Yokohama Specie Bank, and of Mr. Hara, Japanese Premier, to suggest that there was such a "gentlemen's agreement". He concludes, though the statements referred to were either denied by the presumed authors, or questioned by Mr. Thomas W. Lamont and Mr. F. W. Stevens, that the failure of the consortium to participate in financing railways in Manchuria was due to the existence of some such agreement.

A more realistic study of the resulting situation, however, should reveal that the lack of activity of the consortium in railway finance in Manchuria after 1920 was due, in the main, to causes which were entirely extraneous to the character of the consortium itself, or the nature of the agreements under which it operated. The period from 1920 until the present in China has been one of cautious activity on the part of outside financial groups, due, of course, to the questions of security involved on account of the ever-changing political situation. Thus, it would be more accurate to state that the con-

The International Banking Consortium negotiations were conducted simultaneously by the various national banking groups, through their agents, and the foreign offices concerned. Japan's attempt to exclude Manchuria from the scope of operations of the Consortium began with the inquiries of the Japanese Government in August, 1918, as to whether industrial loans were to be included, and whether "relinquishment of all options" meant to apply to such options for railway financing as the Yokohama Specie Bank held for the Kirin-Changchun railway in Manchuria.[14] The American State Department replied that, while it would be highly desirable to have all such prior options, held by individual banks, pooled within the total projects of the consortium, or failing that, pooled within the unit of bankers representing one particular country, the United States had made the condition only as applicable to the

sortium failed to take an active part in Manchuria especially because general conditions in China counselled caution.

In the second place, its failure to participate in certain specific enterprises in Manchuria is traceable to concessions in the negotiations which were made to Japan to finance particular enterprises, such as the proposed extension of the Kirin-Changchun railway, for which Japanese financiers clearly possessed options prior to the beginning of the International Banking Consortium negotiations in 1918-19. Japan did secure such exceptions, of particular railway projects in Manchuria, but these exceptions, when carefully studied, do not show that any "gentlemen's agreement" was injected to exclude the consortium from subsequent operations in Manchuria as a whole. A careful analysis of the negotiations, as presented above, will, perhaps, make this point clear.

[14] *U. S. For. Rels.*, 1918, p. 191.

American financial group. Japan had desired to have all industrial loans excluded, but, if the consortium were to have any practical purposes, such " industrials " needed to have been included.[15]

After the preliminary conference of bankers held in Paris in May, 1919, therefore, the Japanese banking group presented their claims to exclude Manchuria entirely from the sphere of operations of the Consortium. On June 18, 1919, Mr. M. Odagiri wrote from the London office of the Yokohama Specie Bank a letter, addressed to Mr. Thomas W. Lamont, to the effect that they had been instructed by their principals in Japan " that all the rights and options held by Japan in the regions of Manchuria and Mongolia, where Japan has special interests, should be excluded from the arrangements for pooling provided for in the proposed agreement ". " This," continued the letter, " is based on the very special relations which Japan enjoys geographically, and historically, with the regions referred to, and which have been recognized by Great Britain, the United States, France and Russia on many occasions." Mr. Odagiri then stated: " In this connection I would wish to specially draw your attention to a Note from the Secretary of State to the Japanese Ambassador, dated Washington, November 2, 1917." [16] This latter

[15] *Vide* Mr. J. V. A. MacMurray's memorandum on this subject in: *U. S. For. Rels.*, 1918, p. 186.

[16] *The Consortium*, pp. 19-20. The other official commitments referred to were, apparently, the Anglo-Japanese conventions of alliance, the Franco-Japanese agreement of 1907, and the Russo-Japa-

reference was, of course, to the Lansing-Ishii agreement. He then recalled the Japanese reservation, in the form of a declaration by Mr. Takekuchi, which was written into the minutes of the Paris meeting which organized the Six-Power Consortium in 1912, to the effect that participation was on the condition that "nothing connected with the projected loan should operate to the prejudice of the special rights and interests of Japan in the regions of South Manchuria and of the eastern portion of inner Mongolia adjacent to South Manchuria".

During the following period, until October 15, 1920, when the formal agreement was signed by the bankers, Japan made a series of claims with regard

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nese conventions (and, without designation, the secret treaties) of 1907, 1910, 1912 and 1916. The international legal significance of each of these has already been studied in previous chapters.

The interpretation which the British banking group placed upon this attempted invocation of the Lansing-Ishii agreement may be found in a letter which Sir Charles S. Addis, representing the Hongkong and Shanghai Banking Corporation, addressed to the British Foreign Office, June 21, 1919, from which the following is quoted: "The Japanese base their claim to exclude Manchuria and Mongolia on a note dated the 2nd of November, 1917, from the Secretary of State to their Ambassador at Washington. . . . . The contention of the British group is that the statement [quoted from the Lansing-Ishii agreement] does not support the interpretation placed upon it by the Japanese. The British group views the admission of special interests in China generally as excluding the claim to special interests in any particular portions of it. *Expressio unius exclusio alterius.*" The letter then quoted other parts of the Lansing-Ishii agreement to indicate the adherence of the parties to the policy of equality of opportunity in China. (*The Nation* [N. Y.], June 8, 1921, p. 823. This letter is not to be found in the Carnegie Endowment publication titled, *The Consortium.*)

to these regions, especially South Manchuria, which were but partially accepted by other foreign bankers and their foreign offices. The Japanese Government or their financiers first sought to exclude South Manchuria and "Eastern Inner Mongolia" from the scope of operations of the Consortium. Failing in this, they modified their position, first, by seeking to obtain instead a definite commitment from foreign governments that Japan had the right to take such steps in that region as she deemed necessary to guarantee her national welfare. Failing to secure such a specific guarantee, Japan contented herself with a general understanding that the foreign offices concerned would not support their bankers in projects definitely inimical to Japan's "vital interests" and national security there. Japan then proposed that she be given the right to veto the construction of a railway north from the proposed Taonanfu-Jehol railway. This proposition was the principal cause for the long delay in these negotiations. The outcome was that Japan waived her original claim here, contenting herself with the general assurance that the Consortium bankers would not countenance proposed operations which were clearly prejudicial to the economic life and national defense of Japan. As for the Taonan-Jehol railway itself, this was specifically included within the scope of the proposed operations of the Consortium.[17]

[17] *Vide: The International Relations of Manchuria,* pp. 160-169. Liberal quotations of this entire correspondence may be found in this documentary and reference work.

At the outset, Mr. Odagiri, in behalf of the Japanese banking group, had proposed that as a condition for participation of Japan in the new Consortium the foreign bankers would exclude "Manchuria and Mongolia".[18] Inasmuch as the Japanese bankers had the complete support of the government, for whom they were, in a sense, speaking, this constituted a reassertion of a claim to what was tantamount to a sphere of economic interest in Manchuria.[19]

Mr. Lamont, therefore, recognizing that a political question had been injected into the negotiations, referred the matter to the State Department. He replied to Mr. Odagiri that "Manchuria and Mongolia are important parts of China, and any attempt to exclude them from the scope of the Consortium must be inadmissible. The 'special interests' to which you allude have, in our opinion, never had to do with economic matters." The Department of State thereupon addressed a memorandum to the Japanese Embassy at Washington on July 30 protesting against the attempt to exclude Manchuria and Mongolia. "Reservations of regions can only impair its usefulness as an instrument for good", in the view of the Department.[20] The Consortium was to be a means for coöperative financing, not an effort to exclude private financing of enterprises which did not

[18] Letter to Mr. Thomas W. Lamont, June 18, 1919.
[19] *The Consortium*, p. 30.
[20] *Ibidem*, p. 26.

involve a public issue of loan bonds. The British Government, likewise, supported the American view but went farther by discountenancing the establishment by any power of "special claims in particular spheres of interest" in China.[21] Such, in their view, would constitute a direct negation of the principle on which the Consortium was based. The Consortium was devised, in fact, "to eliminate special claims in particular spheres of interest".[22]

The Japanese Government then further defined their claims to a sphere of interest in Manchuria in a memorandum of March 2, 1920, as follows:[23]

"From the nature of the case, the regions of South Manchuria and Eastern Inner Mongolia which are contiguous to Korea stand in very close and special relation to Japan's national defense and her economic existence. Enterprises launched forth in these regions, therefore, often involve questions vital to the safety of the country. This is why Japan has special interest in these regions and has established there special rights of various kinds . . . . . Furthermore, the recent development of the Russian situation, exercising as it does an unwholesome influence upon the Far East, is a matter of grave concern to Japan. . . . . Now South Manchuria and Mongolia are the gate by which these direful influences may ef-

[21] *Ibidem*, p. 30. Memorandum of the British Foreign Office to the Japanese Ambassador at London, August 11, 1919.

[22] On August 27, 1919, the American State Department, in reply to the Japanese note of August 27, declared that it was "unable to assent to the proviso in reference to South Manchuria and Eastern Inner Mongolia" since it was equivalent to "an intermixture of exclusive political pretensions in a project which all the other Governments and groups have treated in a liberal and self-denying spirit". *Ibidem*, p. 31.)

[23] *Ibidem*, p. 34.

fect their penetration into Japan and the Far East to the instant menace of their security."

This statement referred also to Japan's " vested proprietary interests " in Manchuria, her general commercial position, and to the political interest which arose from the possible spread of Bolshevism from Manchuria to Chosen. In matters specifically relating to loans in these areas, Japan reserved the right to take such steps as were necessary to guarantee "the economic existence and national defense of Japan ". Japan thus asserted a dual claim to the right to veto loans for railways in Manchuria which she deemed prejudicial to her interests and the right to take steps necessary to prevent " direful influences " from Russian territory from spreading beyond Manchuria. This latter claim, associated as it was with similar claims made in justification of military intervention in the territory north of the Korean border during the Inter-allied Intervention in Siberia at this time, may be taken as a forerunner of Japan's assertion of the right of military intervention in Manchuria to preserve " peace and order " there during 1925 and 1929. A similar claim had been asserted during the Chinese Revolution.

The Japanese Government, in this communication of March 2, 1920, disavowed any desire " of making any territorial demarcation involving the idea of economic monopoly, or of asserting any exclusive political pretensions, or of affirming a doctrine of any far-reaching sphere of interest in disregard of

the legitimate national aspirations of China, as well as of the interests possessed there by the other Powers concerned ".[24] Japan had a large body of vested proprietary interests in South Manchuria, the South Manchuria Railway and other railways in which Japanese finance had invested heavily, and possessed additionally prior options to finance new railways under bilateral loan agreements with China. These, in the Japanese view, deserved to be protected. A formula was, therefore, suggested, whereby all projects calculated to " create a serious impediment to the security of the economic life and national defense of Japan " were to be excluded from the operations of the Consortium. Japan was to interpret any case where that right of veto was claimed.

The latter formula, however, was rejected by the United States and Great Britain. In the American reply of March 16, 1920, Secretary Lansing, while refusing to admit that Japan's claim to finance the Taonan-Jehol branch to the seacoast was necessary to her economic or political security as a state, expressed sympathy with the view that Japan should be safeguarded so as to be at liberty to secure her own livelihood as a state, economically or politically.[25] He assured Japan that the State Department would in future not countenance any activity of the American bankers in the Consortium which would

[24] *Ibidem*, p. 36.
[25] *Ibidem*, pp. 38 ff.

endanger that right which Japan, as any other state, possessed to secure its independence and continued existence.

A realistic view of the international legal significance of this admission on the part of Secretary Lansing compels that conclusion that it added nothing to Japan's international legal rights. It was but declaratory of a right already existing, universally accepted in international law. As a matter having bearing on the diplomatic relations of the two countries, however, it was a general assurance that, within legally sanctioned bounds, the United States would not interfere should Japan pursue a policy in Manchuria as elsewhere, necessary and appropriate to protect her large economic interests there. This, said the Secretary, was implicit in the terms of the Lansing-Ishii agreement of 1917. In passing, it is pertinent to emphasize that this reference to the Lansing-Ishii agreement, like the agreement itself, did not involve any sacrifice on the part of the United States of her consistent policy of opposing the claim of Japan to a sphere of interest in Manchuria.[26]

To the British Foreign Office, the Japanese Embassy on March 16, 1920, addressed a somewhat similar memorandum, to which the former replied on March 20. The British Government regretted that Japan showed a disinclination to modify her claims. The three specific railway projects which Japan had desired to have excluded from the operations of the

[26] *Ref.* Chapter V, Section 1.

Consortium,[27] were, in the British view, not necessary to supply the food and raw materials required by Japan from Manchuria. Nor were they considered necessary strategically to defend the Korean borders.[28] These lines would, in fact, lie to the west of the South Manchuria Railway, a considerable distance from Chosen. The British Government, however, declared their willingness to subscribe to a written assurance to the effect that the Japanese need not fear that the Consortium would participate in activities prejudicial to the economic life or national defense of Japan. It would be necessary, in the British view, to avoid mention of any specific areas which would give rise to the impression that "a sphere of interest" was being officially recognized.[29]

So far, in the negotiations, Japan had gained no legal recognition either of a sphere of interest or of a right, additional to what she already had, to protect her vested proprietary interests in Manchuria. Japan, accordingly, had to content herself with "relying upon the general assurances" of

[27] Japan had proposed the exclusion of six railway projects. The three to which the British Government referred as not necessary to secure either the economic livelihood of Japan or to defend Chosen were the following: The Chêngchiatun-Taonan railway, a proposed extension of the Japanese-financed, but Chinese Government, railway, between Ssupingkai and Chêngchiatun; the Taonan-Jehol railway; and a line from the Taonan-Jehol railway to the seacoast.

[28] *The Consortium*, p. 45.

[29] Great Britain, therefore, undertook to set limitations upon the broad concession granted to Japan in the Anglo-Japanese Alliance of 1905, which had recognized Japan's "special interests" in China.

Great Britain and the United States as to their disinclination to support their bankers in projects obviously a menace to the economic life or national defense of Japan. Great Britain and the United States, on the other hand, had promised not to support their bankers in financing projects wherein Japanese financiers clearly had a prior right of option. Such, for example, was the proposed extension of the Kirin-Changchun railway to the Korean border.

The negotiations, therefore, turned entirely on the question of financing subsequent projects in western Manchuria. Japan had met opposition to her claims with regard to the Taonan-Jehol project, as well as a project to connect that line with a seaport. On March 16 the Japanese Embassy, in a memorandum to the American Department of State, explained that these two lines had been projected as a means of common defense—both for China and Japan—"against foreign invasion coming from the direction of Urga".[30] Japan believed this claim to be entirely legitimate, but, inasmuch as there was opposition to complete exclusion of these projects from the Consortium's operations, she proposed that, *in case the Consortium bankers in future should not desire to participate,* Japanese financiers would be permitted to finance them alone with China's consent. This was a reasonable proposal, and inasmuch as the Consortium was not formed to *prevent* railway development in China there could have been no

[30] *The Consortium,* p. 47.

legitimate grounds for opposition.[31] Instead of meeting the approval of Great Britain and the United States however, both governments replied that Japan would have to rely on the general assurances previously given.[32] They practically ignored Japan's reference to these two railway projects in southwestern Manchuria.

With regard to one other proposed railway in western Manchuria, however, the Japanese Government were less inclined to compromise. That was the extension of the Taonan-Jehol line north to the Chinese Eastern Railway. On March 16, to the American Department of State, and on April 14, to the British Foreign Office, the Japanese Government proposed that in case the new Consortium were to consider the financing of such a line to the Chinese Eastern Railway the Japanese Government be permitted to exercise a right of veto. Such a railway would constitute, in the Japanese view, a renewal, under different guise, of the so-called Chinchow-Aigun railway scheme against which Japan had offered opposition in 1910. Japan stated that it

[31] It is interesting to note that neither the Consortium nor Japanese financiers have financed any railways in southwestern Manchuria to date. Several short lines and the long Tahushan-Tungliao line have been constructed there since 1925, but exclusively with Chinese capital. A line from the seacoast, from Hulutao and Lienshan on the Peking-Mukden railway, is apparently about to be constructed toward Jehol, this too, exclusively with Chinese finance. Neither the Consortium nor Japanese banks have been requested to participate.

[32] *Ibidem*, pp. 52, 54.

would, if constructed, "have a serious effect upon the South Manchuria Railway".[33]

While practically ignoring Japan's reference to the projects in southwestern Manchuria around Jehol, the British and American governments objected to what they both declared was Japan's request to veto the construction by the Consortium of the Taonan extension to the Chinese Eastern. Both governments stated objections to granting any government the right to veto projects which were not specifically excluded from the Consortium's operations.[34] Japan, therefore, *withdrew her claim to insist on specific assurances* as to the Taonan extension to the Chinese Eastern.[35]

In the meantime, Mr. Lamont had had conversations with the Japanese bankers in Tokyo, and had given them assurances that the Consortium would not undertake activities prejudicial to Japan's vital interests in Manchuria. There appears to be no evidence that he agreed to exclude this proposed line to the Chinese Eastern Railway from the Consortium's undertakings. Mr. Lamont, however, did consent to the exclusion of two other projected lines—between Changchun and Taonan, and between Chêngchiatun and Taonan—from the Consortium's operations. In view of this, the British Government waived their objections regarding these two lines.[36]

[33] *Ibidem*, pp. 147-148.
[34] *Ibidem*, pp. 53-54.
[35] *Ibidem*, p. 56.
[36] *Ibidem*, p. 61.

As far as the foreign offices of Great Britain and the United States were concerned the only assurance they gave Japan that the Consortium would not participate in the Taonan project north to the Chinese Eastern Railway was such as might be inferred from their general assurances not to countenance activities of the Consortium inimical to the national defense and to the economic livelihood of Japan. In this connection, it should be recalled that the British Government had, during these negotiations, clearly expressed their view that these railways in western Manchuria could not be considered necessary to supply Japan with raw materials, nor were they essential to defend the Korean border.

Just what, then, did the negotiations accomplish by way of defining Japan's claims and rights in Manchuria? Careful review of the negotiations themselves is the only adequate summary, but the following conclusions must be self-evident. Japan sought to secure the recognition on the part of the United States and Great Britain of her claims to a sphere of economic and political interest in South Manchuria and "Eastern Inner Mongolia". Further, Japan sought to secure a recognition of her claim of right to exercise a veto on the construction of a railway, the Taonan extension, into North Manchuria. In both these efforts Japan failed. The British objection was even more strongly phrased than the American: "The admission of such a claim to a monopoly of commercial interests in a large geographical area

of China would be a direct infringement of the fundamental idea underlying the creation of the Consortium, which was to abolish spheres of interest ".

The outcome of these negotiations was, in fact, that the Japanese Government specifically withdrew their previous claim to a virtual monopoly right in South Manchurian railway financing. Japan went on record officially as being opposed to " the idea of economic monopoly or of asserting any exclusive political pretensions or of affirming a doctrine of any far-reaching sphere of interest in disregard of the legitimate aspirations of China, as well as of the interests possessed there by the Powers concerned ".

The formal agreement for the formation of the new International Banking Consortium was signed in New York on October 15, 1920, by the representatives of the associated banking groups of Japan, the United States, Great Britain and France.[37] This had

[37] *The Consortium,* pp. 67-73. In contrast with the limited representation of the Six-Power Consortium of 1912, the new International Banking Consortium included a large number of additional firms. The American group, for example had been expanded from five to thirty-one member banks, the Japanese had been increased to eighteen members, and both the British and French groups had been enlarged. The banks which signed the October 15 agreement on the part of their respective national groups were the following: The Hongkong and Shanghai Banking Corporation (British group); the Banque de L'Indo Chine (French group); the Yokohama Specie Bank, Ltd. (Japanese group); and J. P. Morgan and Co., Kuhn, Loeb and Co., The National City Bank of New York, The Guaranty Trust Company of New York, Continental and Commercial Trust and Savings Bank, Chicago, Chase National Bank, N. Y. City, and Lee, Higginson and Co. (American group).

the support of the foreign offices concerned, a joint note from them to the Chinese Foreign Office of January 13, 1921, expressing "full approval".[38] China was not, of course, a party to the agreement and, consequently, was not legally bound to give it any consideration. Only policy might dictate her attitude, an attitude which wavered from hope for results beneficial to her to misgivings and opposition.[39] The agreement itself was to continue for five years, subject to revision. It was to apply to all future loans "which involve the issue for subscriptions by the public of loans to the Chinese Government", to its departments or to the provinces, and, additionally, to government-financed commercial corporations. The agreement applied only to loans

[38] Joint note signed by Mr. Charles R. Crane (U. S. A.), Mr. B. Alston (G. B.), M. Maugras (France), and Mr. Y. Obata (Japan). (*The Consortium,* p. 73.)

[39] Just prior to the conclusion of the October 15 agreement, China was officially informed of the nature and purpose of the new Consortium. (*The Consortium,* p. 65.) A wrong impression as to the purpose of the Consortium was disseminated in the Chinese vernacular press by referring to it as "joint control" (*kung-kuan*) of China's finance by these foreign banking interests. The opinion was widely aired in China that the Consortium, "like a hungry vulture", was biding its time while hovering over a near corpse. Dr. Reinsch, however, writing in 1922, held that in this the Chinese were entirely unfair, the inaction of the Consortium being due principally to its cumbersome character and particularly to the American financial provincialism which would undertake no enterprise abroad, not guaranteed by excellent security, and of a character to permit the selling of foreign bonds readily in the home market. (*Vide* Dr. Paul S. Reinsch's article, "Financial Independence of China", in the *Weekly Review,* Shanghai, September 30, 1922.)

guaranteed by the Chinese Government and floated for financing abroad.[40]

For some time after the visit of Mr. Thomas W. Lamont to Japan in the spring of 1920, and even after the signing and publication of the agreements of October 15, 1920, there was a widespread rumor, in Japan and China especially, that the negotiating bankers, with the tacit consent of their governments, had signed a sort of "gentlemen's agreement" which actually conceded to the Japanese group and their government the reservations which, at the out-

[40] Mr. Thomas W. Lamont, of J. P. Morgan and Company, who actually conducted the negotiations for the American banking group, and was principally responsible for the successful termination of the final negotiations with the Japanese banking group during his visit to Japan for that purpose in May, 1920, wrote an article, dated Shanghai, April, 1920, in which he explained the character and purpose of the Consortium. At the outset, he explained, the American proposals made clear that the Consortium was not "to concern itself with general enterprising in banking, industry or commerce, but rather to include within its scope only those basic enterprises, such, for instance, as the development of transportation systems, highways, reorganization of the currency, etc., as would serve to establish sounder economic conditions throughout China and thus form a firmer foundation for the encouragement of private initiative and trade". These proposals, he wrote, "were duly approved by the other three Governments". As for its actual operations in China, the Consortium would undertake specific projects "only in the event that the people of China desire to do so". While recognizing as primary the Consortium's duty to China to safeguard its administrative integrity, by preventing illegitimate loan enterprises which, uncontrolled, would likely follow from the activities of individual bankers who favored loans to particular political factions, adequate audit measures, "as far as possible through native assistance", and "proper supervision of loan expenditure" would be required by the Consortium. (T. W. Lamont's article, "Putting China on Her Feet", in *Forum* (N. Y.), July, 1920, pp. 90-94.)

set, they had sought with respect to Manchuria and so-called "Inner Mongolia".[41] For this rumor there was adequate justification;[42] for the assertion, however, that Mr. Lamont actually conceded any such reservation in favor of the Japanese group when he visited Japan in the spring of 1919, there is, apparently, no justification. Mr. Lamont had stated on his visit to Shanghai in April, 1920, that, unless Japan withdrew the reservations with respect to Manchuria "*in toto*", to use his words, "she will not be admitted".[43] The formal agreement of October 15, 1920, of course, made no mention of any such reservation. At the time, however, when these rumors

[41] *Vide: The Japan Weekly Chronicle,* Sept. 19, 1920; the *Japan Advertiser,* Feb. 14, 1920. Nor has this rumor failed to survive even until today: *vide,* Mr. A. Morgan Young's editorial book review in the *Japan Chronicle,* Nov. 6, 1929, referred to above.

[42] "The Government of the Unted States refused this demand, but Japan set to work, none the less, to spread the impression that the Powers had assented to the Japanese reservations." (*The Nation,* Oct. 27, 1920, p. 468.) The circumstances surrounding this press distortion were, briefly, these: A dinner party had been arranged for Mr. Lamont in Tokyo on which occasion he and a representative of the Japanese group, Mr. Kajiwara, were to read speeches which had been prepared beforehand, indicating a final agreement on the question of Japan's reservations, and not excluding, tacitly or otherwise, Manchuria from the operations of the Consortium. On the day following, *Kokusai,* a semi-official news agency, distributed in China and Japan a version of these addresses which was distorted in a manner to make it appear, by innuendo, that Japan's reservations had been conceded by Mr. Lamont, with the consent of the American Government. These rumors spread like wild fire in China.

[43] *The World's Work,* March 1921, p. 456. Article by Jesse Lynch Williams, "How T. W. Lamont Got the Consortium Formed", pp. 452-464. Mr. Williams accompanied Mr. Lamont on this Far Eastern trip.

were spread in the orient, neither the draft text of the agreement, nor the exchanges of correspondence—presented in full detail in this chapter—had been published. The assumption was that this rumored "gentlemen's agreement" pertaining to Manchuria was contained in an exchange of letters between Mr. Lamont and Mr. Kajiwara on May 11, 1920. These letters were shortly thereafter published, and they are the only so-called "reservations" to the agreement of October 15, 1920. A careful reading of them, and of the entire correspondence attending the formation of the Consortium, between 1918 and 1920, fails to disclose any evidence that Manchuria was understood to be outside the field of operations of the new Consortium.

Such "reservations" as were admitted, were only those with respect to specific and named projects for which it was evident that the Japanese financiers had already received prior options from China. On May 11, 1920, Mr. Lamont wrote to Mr. N. Kajiwara the letter in which the following declarations were made:[44]

"1. That the South Manchuria Railway Company and its present branches, together with the mines which are subsidiary to the railway, do not come within the scope of the Consortium;

"2. That the projected Taonanfu*-Jehol Railway and the projected railway connecting a point on the Taonanfu-Jehol Railway with a seaport are to be included within the terms of the Consortium Agreement;

[44] *The Consortium*, p. 61.

* Same as Taonan.

"3. That the Kirin-Huining, the Chêngchiatun-Toananfu, the Kaiyuan-Kirin, the Kirin-Changchun, the Hsinminfu-Mukden, and the Ssupingkai-Chêngchiatun Railways are outside the scope of the joint activities of the Consortium."

On the same day, Mr. Kajiwara replied in a letter to Mr. Lamont that, under the conditions mentioned in Mr. Lamont's letter, "we are now able, in accordance with the instructions of the Japanese Government, to withdraw our letter dated June 18, last, and announce that conjointly with the American, British and French banking groups, and on like terms with them, we will accept the Consortium agreement".[45]

These "conditions", to repeat, were only such as have been clearly described, notably in Mr. Lamont's letter of May 11. There was, then, no "gentlemen's agreement" to exclude Manchuria from the scope of operations of the Consortium. The Consortium, as finally organized, was within its right, then, if it desired to undertake railway loan operations with respect to any but the options specifically named as excluded, and, particularly, was entitled, if it so desired, to float loans for China in connection with the Taonanfu-Jehol railway and a railway to connect that proposed line with a point on the seacoast, perhaps Hulutao. The matter of the proposed line in western Manchuria from Taonan to the Chinese

[45] The above is quoted from the text of a cablegram, which includes Mr. Kajiwara's statement of May 11 sent to Sir Charles S. Addis, representative of the British group, London, May 17, 1920, by Mr. K. Tatsumi. (Text in full in the *Nation* (N. Y.), June 8, 1921, p. 828.)

Eastern Railway was not excluded from the scope of operations of the Consortium.

2. *The Washington Conference and Japan's Position in Manchuria.* "The way for the formal disavowal by the powers of Spheres of Interests in China had been prepared by the correspondence between the United States, Great Britain and Japan leading up to the creation of the International Banking Consortium, as well as by certain statements that had earlier been made in the Conference itself."[46] The formal renunciation by the powers, including Japan, of all claims to either "spheres of interest" or "spheres of influence" in China is implicit in the terms of the Nine-Power Pact of February 6, 1922, relating to principles and policies to be followed in matters concerning China. This is not to say, however, that Japan relinquished any considerable part of her tangible treaty rights in Manchuria or permitted any change in the legal status of the Sino-Japanese treaty and notes of 1915 relating to South Manchuria and "Eastern Inner Mongolia,". Such concessions as Japan did make may be summarized as follows:

(1) Japan, by signing the Nine-Power Pact, renounced any claim to either a "sphere of interest"

[46] Willoughby, W. W. *China at the Conference,* pp. 175-176. Dr. Y. Ichihashi's book, *The Washington Conference and After,* is an excellent reference volume on that conference particularly with reference to Far Eastern questions. Dr. R. L. Buell's volume, *The Washington Conference,* covers more ground less thoroughly. Dr. Willoughby's volume is particularly judicious and valuable for terse interpretations of the committee meetings.

or " sphere of influence " in any part of Manchuria. (2) Japan, in this multilateral treaty, subscribed to a more definite and comprehensive statement of the " open door " policy, which in operation would make impossible any reassertion of a claim to far-reaching exclusive economic monopolies in Manchuria. (3) Finally, Japan unilaterally offered to throw open to the joint activity of the International Banking Consortium, then recently organized, the right of option which had been granted exclusively to Japan in the agreements with China in May, 1915, to finance loans for Chinese railways in South Manchuria and Eastern Inner Mongolia. To this latter offer, however, the Japanese delegation made the specific reservation that this unilateral renunciation of the exclusive right of options to finance railways in Manchuria should not alter the multipower agreements exchanged during the International Banking Consortium negotiations as to the scope of operation of the Consortium.[47] As to the intrinsic validity and the continued force of the Sino-Japanese treaty and notes of 1915 with respect to South Manchuria, the Conference made no contribution.[48] Japan remained in possession of the Kwantung leased territory, the South Manchuria Railway, and additional railway lines referred to in those agreements.

[47] *Conference Proceedings,* pp. 1510-1512. (Full title: *Conference on the Limitation of Armament,* Washington, Nov. 12, 1921–Feb. 6, 1922. Washington, 1922.)

[48] *Vide: The International Legal Status of the Kwantung Leased Territory,* Ch. VIII.

The question of claims to " spheres of interest or influence " in China was early raised in the Washington Conference by the Chinese delegation. In the fourteenth meeting of the Committee of the Whole on Far Eastern Questions, Mr. Balfour, for Great Britain, replying to Dr. V. K. Wellington Koo's reference to various inter-power agreements which tended to impair China's integrity and create exclusive privileges for one or another of the foreign powers, made the memorable and far-reaching denunciation of " spheres of interest " which actually became a key-note for the Conference. The Chinese delegation had directly requested that the powers " disavow all claims to a sphere or spheres of interest or of influence or any special rights within the territory of China ".[49] Mr. Balfour's position was tersely stated thus: " So far as Great Britain is concerned, spheres of interest are things of the past. The British Government has not the slightest wish to prolong a situation which, so far as they are concerned, has been abandoned." [50]

[49] Willoughby, *op. cit.*, pp. 174 ff. The Chinese Delegation had defined these as follows: " The phrase ' sphere of interest ', or ' sphere of influence ' as it is sometimes called, is a more or less vague term which implies that the powers making such claims in China are entitled within their respective ' spheres ' to enjoy reserved, preferential, exclusive or special rights and privileges of trade, investment and for other purposes." Grounds for seeking their abolition were declared to be their hampering effect on the economic development of China, their irreconcilability with the policy of equal opportunity for the commerce and industry of all nations, and the tendency to utilize such claims, under cover of economic claims, to further political ends prejudicial to the territorial and administrative integrity of China.

[50] Willoughby, *op. cit.*, p. 177.

The Japanese delegation, without making as definite a declaration as Mr. Balfour's, fell into the prevailing spirit of the Conference and, by signing the preliminary committee reports, and, in particular, the Nine-Power Pact itself, made an equivalent renunciation. Article IV of this multilateral treaty of February 6, 1922, is explicit on the point.[51]

"The Contracting Powers agree not to support any agreements by their respective nationals with each other designed to create Spheres of Influence or to provide for the enjoyment of mutually exclusive opportunities in designated parts of Chinese territory."

The inclusion by Mr. Wang Ch'ung-hui of the term "sphere of influence" along with "sphere of interest" in raising this entire subject may explain why this article of the treaty sought to renounce what, when properly defined, never existed. The wide popular confusion as to the meaning of a "sphere of influence", however, and the resulting effect on the very language of diplomacy, herein evident, were sufficient justification for its inclusion in the article. What is important is rather that the language of the article is likewise a renunciation of all claims to "spheres of interest".[52]

The Japanese delegation did, however, reassert a claim to "vital interests" in Manchuria generally.

[51] *Conference Proceedings*, pp. 1621-1629.

[52] Dr. Buell's innuendo that Japan, therefore, obtained a claim to territory in Manchuria by some form of prescription can hardly be said to have any technical justification. (Cf. *The Washington Conference*, p. 275.) Dr. Buell: "As for Manchuria, it is irretrievably lost so far as diplomacy is concerned." Cf. Ichihashi, *op. cit.*, pp. 305.

This, however, should not be taken as having any specific legal meaning, as it was rather an expression of the natural importance of Manchurian raw materials and markets for Japan than a claim to some special legal right different in kind from that of other powers. Referring to the subject of the Kwantung leased territory, the Japanese delegation merely stated that that territory was a part of Manchuria, and that Manchuria was "a region where, by reason of its close propinquity to Japan's territory, more than anything else, she has vital interests in that which relates to her economic life and national safety".[53] Here was a mild recollection of the phraseology used in the negotiations preceding the formation of the International Banking Consortium. Aside from constituting a declaration as a basis for future policy, and aside from suggesting a possible claim to a subsequent right of intervention, should occasion arise, this reference to "vital interests" had no legal significance.[54]

[53] *Conference Proceedings*, pp. 1064 ff.

[54] Dr. Koo, in the thirteenth meeting of the Committee of the Whole, made a counter statement: "Not only does the national safety of China rely upon the safeguarding of Manchuria, as an integral portion of the Chinese Republic, because these Three Eastern Provinces, as the Chinese people call Manchuria, have been the historic road of invasion into China throughout the past centuries, but also the security of the economic life of the Chinese people depends in a very vital measure upon the conservation and development, with the surplus capital of the world, of the natural and agricultural resources of Manchuria—a region where today an abundance of raw material and food supplies are already accessible to all nations, on

Such general claims and renunciations, however, are less important from a legal point of view than tangible, detailed treaty stipulations, unless they be asserted to justify a right of intervention. Japan's principal renunciation of any further claim to a sphere of interest in Manchuria is implicit in her commitments to the several articles of the Nine-Power Treaty which undertook to make any future enunciation of monopolistic claims impossible.

Baron Kato on November 19, 1921, speaking before the second meeting of the Committee of the Whole, had declared in no uncertain terms that Japan adhered " without question or reservation to the principle of the open door or equal opportunity ", and that Japan did not " claim any special rights or privileges ".[55] The original resolution prepared by Mr. Charles Evans Hughes, as chairman, was, however, too general to receive the support of either the French, British or Japanese delegations. Greater precision was required to make it meaningful. Baron Shidehara sought to restrict the meaning of the " open door " doctrine to the original phraseology of the Hay note of September, 1899—an effort which overlooked the commitments of the powers, including Japan, to any of a half dozen commitments to an "open door " doctrine which had for their purpose the two postulates which, are traceable to

fair terms and through the normal operation of the economic law of supply and demand." (*Conference Proceedings*, p. 1084.)

[55] Willoughby, *op. cit.*, p. 198.

Secretary John Hay's two notes of 1899 and 1900. Mr. Hughes replied that while it was quite true that in the original Hay note of 1899 " there were specific points mentioned ", it was also true that " the bearing of those points and the intent of the policy were very clearly presented ".[56] Those notes undertook to commit the powers to maintaining the territorial and administrative integrity of China as well as to preserve equality of opportunity for trade of all nationals. Mr. Hughes, therefore, denied that the resolution proposed—which was eventually written into the treaty—contained a new statement of the " open door " doctrine: it was rather a " a more definite and precise statement of the principle that had long been admitted, and to which the Powers concerned had given their unqualified adherence for twenty years ".[57] Mr. Hughes subsequently accepted the necessity of qualifying any general statement of that policy so as to preserve the particular rights of foreign nationals and their governments in such matters as patents, trade-marks, mining permits and such rights as were necessary for conducting commercial, industrial and financial undertakings in China.

The Nine-Power Treaty which eventuated from these discussions contains a definition of the " open

[56] *Conference Proceedings*, p. 1250.

[57] Cf. Clyde, P. H. *International Rivalries in Manchuria*, pp. 193-194. Dr. Clyde maintains that the " open door " policy, in so far as it has application to China, was defined once and for all in the first Hay note of September, 1899.

door " doctrine which is too many-sided to be included in a sentence. The treaty clearly commits all signatories (1) " to respect the sovereignty, the independence, and the territorial and administrative integrity of China ", and (2) to maintain " equality of opportunity in China for the trade and industry of all nations ". As to the first postulate, the treaty commits the signatories not to take advantage of conditions in China " in order to seek special rights or privileges ". Positively, it commits the powers " to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government ". As to the second postulate, the powers agreed not to enter into treaties or agreements which would infringe or impair the principle of maintaining " equal opportunity for the commerce and industry of all nations throughout the territory of China ".[58]

These were the general clauses of the Nine-Power Pact. Article III effectively makes impossible any future claim to any form of monopolistic economic privileges in any part of China. To apply the general principle of equality of opportunity it was agreed that in future the powers would not seek, nor support their nationals in seeking:[59]

(a) " Any arrangement which might purport to establish in favor of their interests any general superiority of rights

[58] *Conference Proceedings*, pp. 1621-1629.
[59] *Ibidem.*

with respect to commercial or economic development in any designated region of China;

(b) "Any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China, or of participating with the Chinese Government, or with any local authority, in any category of public enterprise, or which by reason of its scope, duration or geographical extent is calculated to frustrate the practical application of the principle of equal opportunity."

Not only the foreign powers, but China, as a signatory, was bound to these commitments for the future. China, with respect to railways under her control, and such powers as possessed railways in China, pledged themselves not to exercise any discrimination on the ground of nationality with respect to the operation of such lines.

The inference is clear from this characterization of the various commitments of the powers, and of Japan in particular, that upon the ratification of the Nine-Power Pact all claims to spheres of interest in China ceased to have any legal validity. Shortly after the Conference, that is, on April 14, 1923, the Lansing-Ishii agreement was terminated by mutual denunciation. In future, Japan was to proffer claims only to enforcement of her treaty rights or, in case of emergency and impending necessity, to exercise the right of intervention.

Finally, Japan unilaterally signified her intention for the future of permitting her right of priority to finance railways in China, as provided for in the treaty and notes exchanged in 1915, to go into ob-

livion.[60] The negotiations attending the formation of the International Banking Consortium had gone a long way to make that very agreement of 1915 inoperative. Inasmuch as Japan made her renunciation of such rights of priority conditional upon the Consortium agreements, the effect of her declaration was hardly more than to relieve China of her obligation under the 1915 agreements in this regard, and to dispel rumors then current to the effect that some form of secret agreement existed between the international bankers to permit Japan to have a free hand to finance railways in Manchuria. This step on the part of Japan has not materially impaired the superior practical position of Japanese finance in South Manchuria. Japanese financiers have financed the construction of several new railways in Manchuria since the Washington Conference, while the Consortium has so far remained moribund. Nor is there yet a single dollar of foreign capital, other than Japanese, invested in any Chinese railway in South Manchuria, with the one exception of course, of the British capital in the Peking-Mukden Railway.

[60] *Conference Proceedings,* pp. 1510-1512.

CHAPTER X

Japan's "Right to Live Doctrine"

1. The Economic Basis for Its Assertion. The insufficiency of Japan's treaty rights in Manchuria to establish international legal claims to a general superiority of economic and political position there has contributed to the development among Japanese writers and statesmen of a new doctrine or concept of international relations. Japan is confronted with a problem of rapidly increasing population, and particularly of a problem of food supply and raw materials essential to permit of the progressive transition of their island empire to a highly industrialized state. Although the paucity in Japan of mineral resources, of fertilizers, of power resources and of raw materials essential to industrialization has been greatly exaggerated, even by economists who have been all too prone to accept certain statistics as facts, there can be no doubt but that, generally speaking, Japan is bound to be increasingly embarrassed by a general lack of raw materials, a grave food problem in the face of progressive industrialization, a rapidly increasing population, and a highly competitive, if not uncertain, market outlet in China.[1]

[1] A critical estimate of Japan's population, food, power and raw materials problems was attempted in the author's recent article: "Economic Factors in Manchurian Diplomacy", in The *Annals*

This general situation, and the assumption that China hard by is enormously rich in the very products which are required for a progressive development and expansion of Japanese industrialization,[2] has given rise to a not infrequent assertion on the part of Japanese writers and statesmen that this inequitable distribution of the gifts of nature should not give the more favored state the right to set up artificial barriers to the development of natural resources which are required for the very livelihood of the state which is comparatively poor in such resources. In so far as this assertion has taken the form of a new "doctrine" of international relations —not altogether unknown, of course, in the West— it constitutes a criticism of, if not a potential attack upon, the most cherished principle of international law—the absolute and exclusive right of a state to exercise jurisdiction over and provide for the internal development of its own territory.

There are signs of the times which indicate that the old and established doctrine of the equality of states in international law is being strained by the realities of contemporary international intercourse: states are not equally represented, for example, in the League of Nations, and it would be but pedantic to assert that *in fact* the United States does not ex-

of the American Academy of Political and Social Science (Nov. 1930) Vol. 152, pp. 293-307. Footnotes contain references to leading authorities and contentious points of view.

[2] This assumption of the enormous natural wealth of China is also subjected to some criticism in the article just cited.

ercise a decisive preponderance in her relations with several Caribbean, Central and South American states. But the " doctrine " asserted by Japanese publicists that a state, which is manifestly poor in the gifts of nature, has a right, moral or legal, to require a comparatively richer but politically weaker state to provide for the uninterrupted flow of such resources to the needy state, is quite without parallel, except in certain pronunciamentos emanating from Fascist Italy.[3]

Apparently, the only official reference of the Japanese Government to such a doctrine of right in her relations with China and with Manchuria in particular, which was expressed before the Washington Conference, was that contained in the repeated allusions of the Japanese Government to the " special

[3] The importance of this new problem in international relations, which may be expected to become more pressing as Japan's problems of food supply, raw materials and markets become aggravated, and as China manifests the desire and capability of undertaking herself the development of her own natural resources, was suggested by Professor W. W. Willoughby in 1923, shortly after the Washington Conference:

" Recent years have given great importance to the question of the right, as determined by international law or international comity, of one State to have access to or the use of the natural resources of other States. Especially is this a question of vital interest to Japan and China—to Japan because of her need to obtain supplies of foodstuffs and raw materials from abroad; and to China because of the danger lest other nations will be tempted to overstep the limits of international law and international comity in the effort to obtain for their own use the natural resouces which China's soil supplies." (" Japan and Natural Resources in Asia ", in the *North American Review,* Aug. 1923, pp. 170-178.)

relation to Japan's national defense and her economic existence " which were part of the correspondence preliminary to the formation of the new International Banking Consortium for China during 1919-20. In a memorandum of the Japanese Embassy at Washington to the Department of State, March 2, 1920, the following statement was made: [4]

" From the nature of the case, the regions of South Manchuria and Eastern Inner Mongolia which are contiguous to Korea stand in very close and special relation to Japan's national defense and her economic existence. Enterprises launched forth in these regions, therefore, often involve questions vital to the safety of the country. This is why Japan has special interest in these regions and has established there special rights of various kinds."

The memorandum closed with a suggested formula, which Great Britain and the United States were requested to adhere to, to the effect that the Japanese Government should be permitted to reserve the right " to take necessary steps to guarantee such security ".

The American Government replied on March 16 that, while it was quite impossible to accept the formula as such, it was " not unsympathetic with

[4] *The Consortium*, p. 35. In the same memorandum the Embassy explained that the maintenance of these vital interests in South Manchuria did not proceed from a " desire of making any territorial demarcation involving the idea of economic monopoly or of asserting any exclusive political pretensions or of affirming a doctrine of any far-reaching sphere of interest in disregard of the legitimate national aspirations of China, as well as of the interests possessed there by the Powers concerned ".

the professed objects of the principle embodied " therein.[5] " The right of self-preservation ", the memorandum continued, " is one of universal acceptance in the relations between States, and therefore would not require specific formulation as to its application in any particular instance ". Japan was asked to rely on the " good faith " of the United States and of other powers to refuse their approval of any operation of the Consortium which would patently be inimical to the vital interests of Japan.

The British Foreign Office, likewise, rejected the proposed formula, but recognized " the legitimate desire of the Japanese nation to be assured of the supplies of food and raw material necessary to her economic life and her justifiable wish strategically to protect and maintain the Korean frontier ".[6] But they did not believe that to exclude three railways in western Manchuria from the sphere of loan operations of the Consortium was at all essential to provide for the security Japan was conceded. Great Britain, too, gave a general assurance, without adhering to any specific formula, that she would not support her nationals in the Consortium in activities prejudicial to the " economic life and national defense " of Japan.

Japan consequently withdrew the proposed formula.[7]

[5] *Ibidem*, p. 39.

[6] *Ibidem*, p. 45.

[7] Dr. Willoughby has written this descriptive commentary on the nature of the commitments obtained from Great Britain and the United States at this time:

This doctrine of the right of self-preservation—which is not to be confused with the generally accepted right in international law of a state to take preventative measures to preclude the possibility of, or to anticipate, an imminent and flagrant attack by military force, provided that her actions do not go beyond the bounds prescribed by international law—did not, then, receive any clear formulation in these negotiations preliminary to the formation of the International Banking Consortium. It did not contain the assertion that the mere desire of an outside state, born of a presumed need, for acquisition of raw materials to be found in another constituted the basis for an assertion of a right in international law to obtain them, by force if need be, or by other methods in infringement of the sovereign territorial rights of the politically weaker state.

But again, at the Washington Conference, a suggestion of Japan's desire to assert a claim to a right in South Manchuria, presumed to be necessary to secure her national defense and economic livelihood, appeared. In the twelfth meeting of the Committee on Pacific and Far Eastern Questions, December 3,

"It will be observed that, in this correspondence, neither the British nor the American Government gave recognition to any right upon the part of Japan, in the exercise of its general right of self-preservation, to take any action within Manchuria or Mongolia that would be in derogation of the sovereign territorial rights of China, or that might be founded upon a general superiority of rights (to use a phrase later employed by Secretary Hughes) within any designated region of China." (*North American Review, op. cit.*, Aug. 1923, p. 173.)

1921, replying to the Chinese request that the powers abandon their leased territories in China, Mr. Masanao Hanihara, Vice-Minister for Foreign Affairs and delegate to the Conference, again referred to Japan's " vital interests " in Manchuria. He said: " The territory in question forms a part of Manchuria—a region where, by reason of its close propinquity to Japan's territory, more than anything else, she has vital interests in that which relates to her economic life and national safety." [8]

The outcome of the Washington Conference itself committed Japan to a more definitive statement of the " open door " principle which would preclude any power from assuming a " general superiority of rights " of a monopolistic character in any part of China. " In doing this ", in the words of Professor Willoughby, " Japan is now precluded not only by the general principles of international law and comity but also by her own formally given undertakings ".[9] Japan sought at the Washington

[8] *Conference Proceedings,* p. 1064.

It will be recalled that Dr. V. K. Wellington Koo replied in the next meeting of the Committee that " the security of the economic life of the Chinese people " depended equally much or more upon Manchuria. (*Ibid.,* p. 1084.) He concluded: " In view of the foregoing facts it is clear that China has such truly vital interests in Manchuria that the interests of any foreign Power therein, however important they may be in themselves, can not compare with them. The fact of close propinquity of Manchuria to Korea, if it justifies any claim to consideration, can be equitably appealed to only on the condition of reciprocity."

[9] *North American Review, op. cit.,* p. 173.

Conference a " spontaneous " statement from the Chinese delegation which would indicate a general willingness to permit the development of China's natural resources with foreign capital. The Chinese delegation replied that, " consistent with the vital interests of the Chinese nation and the security of its economic life ", this was what China intended to do —to invite the coöperation of foreign capital and skill in their development.

It thus appears that at the Washington Conference the Japanese delegation again sought to assert the doctrine that a state comparatively poor in natural resources should be entitled, as a matter of equitable privilege at least, to obtain such materials from a state which possessed them in plentitude. The Japanese delegation did not claim, however, that a regular supply of such raw materials for Japan could be guaranteed, as a matter of international legal right, by forceful methods or by acts prejudicial to the sovereign rights of China.[10] But in these official statements of the Japanese delegation at the Washington Conference, as in those accompanying the attempts of the government to exclude Manchuria from the scope of loan operations of the

[10] At the second meeting of the Committee on Pacific and Far Eastern Questions, November 19, 1921, Admiral Baron Kato had declared: " We look to China in particular for the supply of raw materials essential to our industrial life and for foodstuffs as well. In the purchase of such materials from China as in all our trade relations with that country, we do not claim any special rights or privileges, and we welcome fair and honest competition with all nations." (*Conference Proceedings*, p. 874.)

International Banking Consortium, we find the seeds for the formulation of the new "doctrine" which, since the Washington Conference, has been frequently proffered by Japanese writers.

2. The Statement of the Doctrine. The most sweeping, and perhaps the most responsible, of these assertions are those of the late Premier Hara, made in 1921 just before the Washington Conference, and those of Mr. Yosuke Matsuoka, formerly vice-president of the South Manchuria Railway Company, and now a member of the Japanese Diet. This doctrine of the right of a state, poor in natural resources, to insure their regular supply from another state possessing such raw materials, as well as food and fertilizer, in abundance, may best be presented in their own words.

The late Premier Hara, shortly before his lamentable assassination, gave the authority of high official responsibility and distinguished statesmanship to the statement of the doctrine of the affirmative duty of the richer state to open wide its door to an economically weaker state, and of the negative responsibility of that state gifted by nature to refrain from placing obstacles in the way of the development of those raw materials by an outside state.[11] Premier Hara, beginning with the premise that no nation has

[11] *Vide:* Premier Hara's paper, entitled "Reflections on Lasting Peace", in *Gaiko Jiho* (*Diplomatic Review,* Tokyo), September 15, 1921, and republished in English translation in The *Living Age,* January 7, 1922.

the right to compel another to commit suicide, stated his assertion of doctrine as follows:

"It follows that it is the great duty of every government today to open wide its economic doors, and to extend to all peoples free access to what is vital to existence, and thus to save the more unfortunate from unnatural misery and discrimination. . . . The 'open door' and the abolition of world barriers must be our policy, as it is the first principle of a lasting peace. We Japanese in particular are suffering from the increasing difficulty of living, attributable to our ever-waxing population and our ever-waning resources. Were any people to reach a point where their entire energy was inevitably devoted to earning a bare subsistence, and no energy was left them for attaining higher spiritual and cultural ideals, that people would indeed be facing a mighty dark future. We tremble to think that our people are often threatened with uncertainty as to even the necessaries of life. Their condition ought to be remedied and greater freedom be given the Japanese, if the world expects her to be the keystone to the arch of peace of the Far East, and a faithful supporter of the welfare of the world. Thus, even a single example shows beyond a doubt the absolute dependence of lasting peace upon the 'open door.' By 'open door' I do not mean a complete throwing down of national boundary stones. What I have in mind is the removal of the economic insecurity of some peoples by extending to them the opportunity for free access to the world's resources, eliminating other artificial economic barriers, and adjusting as much as possible the inequality arising from the earlier discriminations of nature and of history."

A striking parallel to this doctrine asserted by Premier Hara suggests that we have here the germination of a concept which may well develop to

such a form as to compel the attention of contemporary students of international law:

"If the world at large, if the big Empires that to-day control the raw materials and the empty spaces fit for colonization, hem in a vital and prolific nation, not naturally enjoying the possession of abundant raw materials and empty spaces for her sons to settle in, and prevent, thereby, that Nation from maintaining a proper standard of life for her sons, by closing their doors to colonization or exacting a monopoly toll for the raw materials on which her industry may thrive, it is they who will be responsible for any wars which may break out in consequence of such a Nation's rights to live and to enjoy a better life."

This is Fascism—in one of its manifestations. The quotation is from a volume to which Premier Mussolini has furnished a preface, in which Il Duce approves of the quotation.[12] The doctrine is closely associated with the idea of the state which exalts that institution, its existence, its ends, above the rights of the individual citizens who compose it. Proceeding from the assumption of the superiority of the state itself, and having no patience with com-

[12] Barnes, J. S. *The Universal Aspects of Facism*, p. 157. Cited by W. W. Willoughby in *The Ethical Basis of Political Authority*, p. 144. Dr. Willoughby is perhaps the first scholar to call attention to the striking similarity of this doctrine as expressed by certain Japanese writers and by exponents of Fascism. He remarks: "It is, perhaps, of interest to note that we find almost identical arguments advanced by certain Japanese writers and statesmen in support of Japan's right to obtain for herself, from outside her own present political boundaries such *material* as may be necessary in order that she may realize what she conceives to be her legitimate national development." (*Op. cit.*, p. 145.)

munistic or socialistic leanings toward immersing the state's interests in that of a world state or in humanity generally, it concludes that the state, as a matter of right, must provide against its own retrogression or decay. If, then, another and weaker state, though comparatively rich in the gifts endowed by nature economically, undertakes to establish economic barriers against the " vital and prolific " state, then, the responsibility of a possible war is upon the shoulders of the weaker state. This extreme statement of the doctrine, it should be said, however, has not yet been asserted by Japanese statesmen or publicists.

Before attempting an appraisal of the doctrine of the right of a state to provide against its own retrogression, as asserted by the late Premier Hara, another and even more interesting and forceful statement of essentially the same doctrine, may well be presented. This proceeds from Mr. Yosuke Matsuoka, a man who, by long association with Manchurian affairs, speaks with full knowledge of the facts of Japan's dependence on Manchuria for raw materials, and with official responsibility, born of long participation in diplomatic life. Mr. Matsuoka was a member of the Japanese delegation to the Peace Conference at Paris and, as a strong leader of the Seiyukai, one of Japan's leading political parties, is recognized as a possible future foreign minister. Mr. Matsuoka introduces a brochure on the " Eco-

nomic Coöperation of Japan and China in Mongolia" with this poignant paragraph:[13]

"The old conception of the State as an independent entity exclusively concerned with the pursuit of selfish national interest is no longer accepted as satisfactory by a world in which the interdependence of peoples is increasingly more obvious; rather is it conceived of now as a free unit in an essentially co-operative society of nations, just as the individual man is a unit in society. We no longer apply a perverted Darwinism to the life of nations and conceive of international politics as a perpetual struggle for existence, as in the life of the jungle. We recognize co-existence, and co-operative life as inherent features of human society. The world's statesmen who since the Great war have been seeking means by which lasting peace may be established agree on certain fundamentals, amongst them: that every race should be protected in its right to existence; that every race has a right to equal opportunity for its enjoyment of civilization; and that co-operation among the nations is the best road to this desirable end."

Continuing, Mr. Matsuoka asserts that "as this consciousness of the rights of other nations grows, we see a corresponding decline in the territorial ambitions which even recently were thought to be legitimate". After expressing a hope that "the increasing tendency to recognize the right of all states

[13] This was issued in the form of a pamphlet during the summer of 1929 on the eve of the Kyoto Conference of the Institute of Pacific Relations in Japan, to which Mr. Matsuoka was a delegate. It was written while he was vice-president of the South Manchuria Railway Company, and was published in translation from an original brochure in Japanese issued by the Sino-Japanese Association of Manchuria, a Japanese organization associated with the railway company (*Chunichi Bunka Kyokai*, Dairen).

to equal treatment in the family of nations " will lead to a recognition of the principle of " racial self-determination "—which apparently is to be interpreted to mean that a politically strong state, weak in natural resources, is to be given broad liberties to secure " racial self-determination " in ways not hitherto sanctioned in international relations—Mr. Matsuoka continues:

" From this it follows that the nation which should attempt to monopolize a superiority of national resources of which other nations stood in need would be open to condemnation from the international point of view. If the individual man is inalienably endowed with the right to life, liberty and the pursuit of happiness, it follows that the individual nation's right to exist is no less sacred. If this be admitted, it follows that each nation should make its surplus resources available for the needs of others."

After pointing out how the " coming of Japan into Manchuria was a natural consequence of her life and death struggle with an enemy which had cost her two billion gold yen and a hundred thousand lives ", and after describing how Japan has contributed to the development of railways, to the colonization of Manchuria by Chinese immigrants, and to furnishing the capital required for major industrial development there, he concludes:

" If I am right in the premise that what lies at the root of international peace is protection of every race in its right to live and recognition of its legitimate aspirations, it follows that the people of Japan, upon whom rests a due share of

responsibility for the world's peace, should have the right to ask for the security of their national existence, with assurance as to their opportunity of progress and growth for the future. I mean to say that Japan, as is generally known, finds herself face to face with a situation arising from her over-population, her small territory, and her lack of raw materials. To these questions at issue she must needs find an answer if her existence as an independent nation is to be assured. She has reached the point where she can no longer afford to deal with these matters except in the spirit of candour. Provided such Japanese ideas be not incompatible with the peace of the world, her expression should receive due respect as based on the legitimate rights of a nation which is compelled to find an outlet somewhere. It is for this very reason that Japan's special position in Manchuria and Mongolia has virtually been recognized, directly or indirectly, by the Powers." [14]

Mr. Matsuoka's views, which follow, may well be compared with the quotation from the Fascist doctrine, as quoted from Mr. Barnes above. He holds that "were China to deny other peoples the opportunity of sharing the benefit of her rich resources for no other reason than that they lie within her territory, she would indeed be laying herself open to criticism".[15] But Mr. Matsuoka, like the Japanese

[14] The extent to which Japan's "special position" in Manchuria has been recognized directly or indirectly, by China and third party states, has already received attention in previous chapters of this book.

[15] Quoting Barnes on the Fascist doctrine: "If the world at large, if the big Empires . . . . prevent . . . . that Nation from maintaining a proper standard of life for her sons . . . . it is they [in whose territory the resources lie] who will be responsible for any wars which may break out in consequence of such a Nation's right to live and to enjoy a better life." (*Op. cit.*, p. 157.)

delegation at the Washington Conference, takes care to enter the *caveat* that Japan has no designs on Chinese territory in Manchuria, nor the intention to obtain a monopoly of the natural resources there.

No summary statement of the doctrine of a state's right to exist, by providing against a deprivation of raw materials essential to its livelihood, but which are located within the territory over which another state exercises full sovereignty, is necessary. The doctrines of Premier Hara and of Mr. Matsuoka are complementary, if not identical. In passing, however, certain ideas expressed by the late Premier Hara may well deserve careful attention. One is the unique use of the term " open door ".

In the Far East, particularly in so far as this term has been applied to China since 1899, the " open door " policy has been officially recognized—as at the Washington Conference—to be restricted to two general postulates: first, that the powers having interests in China will pursue policies so as to maintain the territorial and administrative integrity of China, and, second, that they will not seek as states, nor support their nationals in seeking, discriminatory privileges derogatory of equality of opportunity for the trade of all states in China. Premier Hara specifically rejected the application of the term " open door " to a general throwing down of national boundary stones, to use his phrase, but it is quite obvious that the context clearly justifies the conclusion that, in using the term " open door ", he had

in mind some arrangement by which China would remove " artificial economic barriers "—such as special import tariffs, export taxes, anti-alien land laws, and constitutional or statutory regulations, in the form of mining laws and laws of incorporation of Sino-foreign corporations which have undertaken to give expression to the nationalistic concept of China's rights under eminent domain. Premier Hara evidently, as he expressly stated, would have China provide for " the free access " to her raw materials by Japanese industrialists and financiers, thus to adjust the inequality of natural wealth for which nature is responsible. So individualistic and entirely irresponsible have been the views of several writers as to the meaning of the term " open door policy " in its application particularly to Manchuria, that, in the writer's opinion, no good purpose can be served by this equally individualistic and non-technical use of the term " open door " by the late Premier Hara. Confusion is already confounded—and with unfortunate practical results.

A commentary, particularly on the doctrine as set forth by Mr. Matsuoka, needs also to be made, both to describe his doctrine fairly and to raise the question of its reconcilability with the doctrine of a state's right to take steps in the territory of another to insure its own livelihood. Mr. Matsuoka takes care not to say that " Japan may advance herself materially in Manchuria through her own effort ". " When the question of developing the country and

people of Manchuria affects Japan as closely and vitally as China ", he continues, " any ideas except of friendly coöperation between these two nations seem so out of place ". " In their relations ", he therefore asserts, the conduct of each state " should be grounded on the basic principles of internationalism, and that in all cases China should first be considered ".

Is it not pertinent, however, to express a doubt as to whether the very doctrine itself, which asserts that " the nation which should attempt to monopolize a superfluity of national resources of which other nations stood in need would be open to condemnation ", is at all reconcilable with this profession of comity and coöperation so much desired? To impute culpability to the state which seeks to develop its own natural resources in such ways as it sees fit, and by methods which are today recognized as within the sole competence of the state having sovereignty over territory, is to advance a doctrine, not of coöperation and conciliation, but rather of unilateral right to take action contrary to the declared objects and practical developmental activities of the state within whose boundaries such raw materials exist.

Not alone in Manchuria, but generally in China, it is evident that the Chinese Government and their financiers and industrialists are bent upon developing China's resources themselves, admitting foreign capital and technical participation only when pa-

tently necessary, and then only with adequate safeguards against the exploitation of those resources for the principal benefit of foreign states or their nationals. This is a natural tendency of an articulate nationalism, which may be expected to run counter to the new doctrine, now in its formative state in Japan, that one or more foreign states is entitled as a matter of right to participate in the industrialization of China and to divert raw materials, food and fertilizer from local consumption there.

3. An Appraisal of the Doctrine. By way of criticism of this new doctrine, principally in an effort to evaluate it in the light of present principles and practices of international law and relations, it is evident that the doctrine of a state's right, moral or legal, to provide for its existence, growth and prosperity by requiring a relatively richer state economically to furnish untrammeled access to such resources for the foreign state, is potentially in direct conflict with the doctrine of the absolute and exclusive sovereign right of the state possessing such raw materials to deal with them as she herself wishes.[16]

[16] Dr. W. W. Willoughby, an eminent authority on constitutional and public law, states the principle as follows: "It is universally recognized that a country has the first claim upon the natural resources of its own soil, and may rightfully exploit or conserve them in accordance with the economic needs of its own people, whose needs rightfully take precedence of the needs of other people. As for Manchuria and Mongolia, the Chinese Government can, without difficulty, demonstrate that their forests, lands, and subsurface treasures will be urgently needed by the Chinese them-

Special economic privileges, such as government-granted railway, mining and industrial concessions, derive their international legal validity from the contract instruments which created them. It follows that the free consent of the grantor is a condition of the legality of the commercial contracts. Economic privileges, granted as special exceptions to the free interplay of competitive trading, flow from the authority of the state within which these privileges in the form of concessions operate, and it is a long-established and universal rule of international law that " the jurisdiction of the nation within its own territory is necessarily exclusive and absolute ".[17] " It is ", to quote further the language of Chief Justice Marshall in the leading case, " The Exchange ", " susceptible of no limitation not imposed by itself." Consequently, it is quite evident that in so far as this new doctrine presumes to be grounded upon any international legal validity it is not only not supportable by international law, but contrary

selves, and this too within the very near future. For some years now, Manchuria and Mongolia have furnished outlets for the surplus populations of other of China's provinces, and, with the rapidly increasing industrialization of China, it is certain that the coal and minerals of the Mongolian and Manchurian mines will be needed for home use or manufacturing." (*North American Review, op. cit.*, p. 175.)

[17] " *The Exchange* " (1812), 7 Cranch, 116. (Hall, J. P. *Cases on Constitutional Law*, p. 135 [1913]. Scott, J. B. *Cases on International Law*, pp. 330-310 [1922].) *Cunard Steamship Company v. Mellon*, (1923), 262 U. S. 100. (*American Journal of International Law*, Vol. 17 (1923), pp. 563 ff.)

to one of the most universally accepted principles of that body of international rules and principles.

Practically the only justification in international law for a disregard of the sovereign rights of one state by another state—and even this is subject to criticism by some publicists—is the right of self-preservation of the state itself against an imminent attack from another. Professor E. C. Stowell, writing on the subject of intervention, expressed the dangers which an extreme application of that principle would mean for world peace:[18]

"But this doctrine of necessity strikes at the very root of international society, and makes the preservation of the separate states of greater importance than the preservation of the community of states. Needless to say, it is not supported by the weight of authority, nor by the practice of states."

[18] Stowell, E. C. *Intervention in International Law,* pp. 392-393. Cf. Stowell, *International Law,* pp. 117-118. 1931; Fenwick, C. G. *International Law,* pp. 143 ff. Less extreme assertions of states and publicists have to do with the right of self-defense against direct or indirect attack in the case of impending invasion or war. The so-called "doctrine of necessity" in international law is not uniformly accepted by the publicists. "The abstract right of self-defense against all forms of attack is conceded, but it has not been reduced to a positive rule by a consistent line of precedents." (Fenwick, *op. cit.,* p. 145.) The author here quoted refers to cases of "indirect attack" in time of impending war. As for "the right of self-preservation", or the right of one state to insure its livelihood in time of peace by safeguarding the supply of raw materials from another state, there is obviously no rule of international law to justify it. Care should be taken not to confuse the abstract principle of the "right of self-preservation" or the "right of self-defense" with a presumed application in circumstances where it conflicts with equally well-established principles of international law.

The extreme statement of this claim of a state's right of self-preservation, in case of imminent danger to its extinction by attack or absorption from the outside, is expressed by such publicists as have an inordinately high regard for the authority of the state itself as against the individuals who comprise it. It comes, then, as a natural corollary of the Fascist concept of the omnicompetence of the state as against the body-politic of Italian nationals. It rises, not without some natural momentum, in Japan where the state as an entity is regarded as something infinitely more than the sum of the individual Japanese citizens who compose its body-politic. The more extreme the assertion of this doctrine of self-preservation, however, the more likely will it militate against the application of the now all-too-meagre body of universally accepted principles of international law. Inexorable logic from the premise it posits makes the doctrine as applicable to one state as to another, and the moment it is recognized that a second state can assert the same doctrine as a counter cause, its impossibility as a possible principle of international law becomes obvious. Not law, but war or chaos in international relations, would be the outcome.[19]

[19] The doctrine that any state is sole judge of its action under the necessity of self-preservation smacks much of Machiavelli and Metternich. John Westlake, than whom few have contributed more to a reasonable statement of international law, refuting Rivier's contention that under some circumstances one government may be "bound to violate the right of another country for safety of its

However much there may be elements of similarity in the doctrine of the right of self-preservation as just described, and the new doctrines proffered by Japanese publicists, it must be quite evident that they are not identical. The former presumably applies only to actions taken in cases of patent necessity, caused by armed attack or invasion from an outside state. The latter, the Japanese version, has nothing to do with this question of military defense: it is the assumption of a right to have access to the raw materials of another state in the normal conditions of peace, and, as such, it looks to the future, rather than to the present. The assertion of the doctrine, therefore, involves the necessity of first establishing adequate economic grounds to prove the unavoidable dependence of one state upon the resources of another. Reasonably, too, it places the burden of proof upon the state, which asserts the doctrine to justify a particular action, to establish that all alternative courses failed. These are questions, not of law, but of fact, economic fact, and are not germane to our present study of the application of this "doctrine" to Manchuria. And when, if possible, a strong case

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own", showed that however much a government is charged with the protection of its country's interests, the case is quite different when one state undertakes to assume the right to protect itself at the expense of the sovereign rights of another. "Patriotism", wrote Westlake, "should not allow us to forget that even our own good, and still less that of the world, does not always and imperatively require the maintenance of our state, still less its maintenance in its actual limits and with undiminished resources." (Westlake, J. *International Law*, Vol. I, p. 312.)

had been established that Japan's dependence on Manchuria, for example, for raw materials, a market outlet and the like, was vital to her national existence, the reliance upon the " doctrine " itself would have to be entirely on *moral grounds* or on the basis of *mutual agreement* with China, for it has no present standing in international law.

The present age is, to be sure, one of world economy. The interdependence of national states in the matter of raw materials and foodstuffs is such that international political organization has lagged far behind the advance of private commercial enterprise in integrating the economy of one state with that of another. What the future may bring is problematic. For the present, however, it is doubtful if any state can be expected to accept a doctrine which has been described as the " free trade solution ". This has been explained as " the voluntary abolition by the various states of all restrictions on production and distribution of raw materials, including presumably the elimination of all limitations on exploitation of resources and all tariff and similar restrictions ".[20]

This extreme solution is, for the present, obviously impractical, although an amelioration of the evils of high tariff walls, as in Europe and the Americas, is

[20] Cf. Donaldson, John. *International Economic Relations,* pp. 499-500. *Vide: American Journal of International Law,* Vol. 19, No. 4 (October, 1925), pp. 739-742. Article by Chandler P. Anderson, " International Control and Distribution of Raw Materials ". Willoughby, W. W. *op. cit.,* Vol. I, p. 406.

imperative. A state which may, as a matter of policy, urge its adoption by another, might well stop to inquire to what degree she herself is prepared to remove those restrictions, in the form of limitations upon foreign economic enterprise, tariffs and the like, which she herself has seen fit to enforce. If, then, we can hope for progress in the direction of lowering those state-imposed political restrictions which act as handicaps to the free interplay of world economy, there would seem to be no practical steps in that direction except the mutual adoption of reciprocal conventions with respect to the liability of foreigners in local courts, alien land and mining laws, most-favored-nation treatment, national treatment and reciprocal tariff arrangements. For the present, the adoption of such bilateral provisions must remain in the domain of national policy, not of international law.

Of the moral grounds for the assertion of such a doctrine, Professor Willoughby has tersely summarized a conclusion which it is not difficult to accept: [21]

[21] *North American Review, op. cit.*, p. 177. It may be added that Kaiser Wilhelm is not the only ruler of a western state who has professed or acted upon such a doctrine of divine destiny to destroy others. The names of Napoleon, Metternich, Palmerston and Disraeli are suggestive. Dr. Willoughby, after suggesting the usually proffered alternative for Japan of greater industrialization to relieve the population problem, and free competition in the open market to serve that progressive industrialization, concludes that " . . . . should she find herself unable to do this to an extent that will enable her to compete with the workmen of other countries, she cannot there-

"In the first place it may be said that the misfortunes or needs of one State give to it no ethical or moral right to violate the rights of another State, any more than they justify in private law, the seizure by one individual of another individual's property. The doctrine that to desire or to need a thing is sufficient to authorize a State to take by force the objects desired or needed was of course Germany's doctrine when it declared that it had a right to gain for itself a place in the sun. It is scarcely to be conceived that, when this is seen to be its essential character, Japan will wish to advocate or practice the doctrine." [22]

We may conclude, then, that this doctrine of the right of one state, being comparatively poor in raw materials or food or power resources, but nevertheless possessing a "vital" population tending rapidly to increase, to insure the supply of those wants, or to send abroad emigrants, in a state better favored by natural gifts of raw materials and undeveloped lands—and to do this on the assumption that responsibility for possible international friction or war attaches to the state which chooses to develop its own resources in the way it sees fit—is not only not supported by any established principles of international law, but contrary to one of its most cherished tenets. That is the principle of the absolute and exclusive right of any state to exercise political authority and to provide for the development of territory over which it has jurisdiction.

upon claim special rights of economic or political exploitation outside of her own borders".

[22] *Vide:* Willoughby, W. W. *op. cit.*, p. 408.

Morally, as well, there can hardly be justification for such a doctrine, except as states generally come to recognize the pragmatic necessity of building a structure of international intercourse on less nationalistic premises than at present prevail. No state has a moral right to violate the sovereign rights of another to satisfy its own wants. If moral considerations are to be introduced to induce states to accept, as a matter of comity and good will, the idea that each state should endeavor, so far as commensurate with its own welfare, to assume a moral obligation toward another less gifted by nature, the avenue of achievement is through liberal diplomatic policy, not through arbitrary disregard of unquestioned legal rights of others.

The problem which has been suggested by this statement of Japanese doctrine, however, is not likely to become less pressing in the future. The doctrine will likely be refined, restated and reasserted in Japan, probably in official form, before many years have passed, for it touches one of the most vital thought-springs in every thinking Japanese. Diplomacy is thus presented with a task, born of an obligation to play fair with both Japan and China, for which our present international law can offer but little assistance.

In view of the growing conviction among economists, and to a far lesser degree among statesmen, that the time is rapidly arriving when new concepts of *Weltwirtschaft* must inevitably compel the de-

velopment of new policies in world politics, it is not unlikely that international law will in future become more concerned with the essential equities of such a situation as Japan now claims is rapidly descending upon her. The problem is to reconcile such possible principles of international law with the fundamental concept of state independence in a juristic sense. But international law does not at present square with these new economic facts. It follows that the only practical utility of the assertion of such a doctrine, which may well be styled " the right to live doctrine ", aside from its psychological and persuasive appeal, must lie in the direction, first, of freeing it from those accretions which smack of aggressive nationalism, and second, of admitting that its invocation must be accompanied by a give-and-take foreign policy. Its utility, as well as its justice, may well be measured by the sincerity of the companion principle of compromise.[28]

[28] Certain recent discussions of the reaction of present world economy upon international relations and law may here be cited, for students who would pursue the subject farther. Professor John Donaldson discusses the "colonies-for-outlets" argument; notes its former vogue in Japan; and questions the efficacy of emigration as a solution of a population problem. He considers the case of Italy. (*International Economic Relations,* pp. 38-39.)

Dr. Warren S. Thompson, however, contends that "it is not true under modern conditions, when the methods of birth control can be easily ascertained by anyone, that emigration may not contribute to a permanent solution of the problem of pressure of population in any given country". (*Danger Spots in World Population,* p. 332.) Dr. Thompson's general thesis on Japan's problem is particularly stimulating, although it is not supported by a thorough analysis

of the exact dependence of Japanese industry upon Manchuria for raw materials and a market outlet. (Cf. Orchard, John E., *Japan's Economic Position, passim.*) It may be interposed that so-called "unused lands" are not as plentiful in Manchuria as is usually thought to be the case, and that these exist in areas far removed from the zones of Japanese population movement in Manchuria.

The value of Dr. Thompson's general thesis with respect to Japan is evident, however, in that he seeks to find international political solutions which will square with economic facts. (*Op. cit.*, p. 130.) He holds that there is a necessity for "a readjustment of resources voluntarily arrived at", a solution "far more stable than any settlement imposed by the victors in a war". (p. 333.) There should be, he contends, an international fact-finding commission, empowered to propose political solutions in the light of established economic facts. He does not support a thesis that any state may impute culpability to one which seeks to develop its own resources, thus depriving another of them.

For further valuable materials on the problems of population and raw materials in world politics, reference may be made to the following: Thompson, Warren S. *Population Problems;* Leith, C. K. *World Minerals and World Politics;* Leith, C. K. "The World Iron and Steel Situation in Its Bearing on the French Occupation of the Ruhr", in *Foreign Affairs* (N. Y.), June, 1923; and other articles in the same journal: March and September, 1923; March, June and December, 1924; January, April and July, 1926.

CHAPTER XI

"Asia Monroe Doctrine"

1. Manchuria and the "Asia Monroe Doctrine". Japan's claims to a "special position", "special interests", "paramount interests" or "vital interests" in Manchuria, as well as the so-called "right to existence" or "right to live doctrine", have all been in the background, or actually considered essential portions of what Japanese writers and statesmen have called Japan's "Monroe Doctrine" for China. The term "Asia Monroe Doctrine" is a misnomer in more ways than one, but its falsity is first evident in the fact that Japan has never formally proclaimed any so-called "doctrine", at all parallel to its presumed American prototype, which had application to Asia as a whole, or even to Eastern Asia. Only China has been the object of such attempts as have been suggested by responsible Japanese officials to invoke a so-called "Asia Monroe Doctrine".

The so-called "Asia Monroe Doctrine", in so far as it can be said to have had any application to China, has been a term, used by Japanese writers and officials, to apply to a claim of right on the part of Japan to assume the leading rôle in diplomacy with respect to China. In this sense, the claim has

a distinctly Manchurian phase, for it has been evident for a quarter century that the Japanese Government have usually looked with decided disfavor upon other powers launching either individual diplomatic programs or proposing international coöperation without first consulting Japan. The Japanese expression " Asia Monroe-shugi ", however, has had many overtones of meaning which can only be suggested here. Among a few writers, the term has been used as a sort of counterpart to the slogan of " Asia for the Asians ". This phase, like the once loudly heralded Pan-Asiatic Movement, has never been important, evidently because more responsible individuals realize how different are the fundamental national traits of the Japanese and Chinese people. Particularly in Manchuria is it apparent that the ideal here visioned of an " Asia for the Asians " is a chimera of no practical importance for statesmen.

In contrast with the American Monroe Doctrine, the Japanese " Monroe Doctrine " has been concerned principally with obtaining recognition for Japan that conditions in China—whether manifested by a cutting off of raw materials from Japan, or by disorders which injure the lives and property of Japanese living in China, or by attendant uncertainties which presumably prejudice the " vital interests " and national defense of Japan on account of the potential threat of outside foreign aggression in China—warrant Japan in asserting a position of paramountcy in East Asiatic politics. In view of

these considerations, all of which place emphasis upon the necessity of such a " doctrine " in Japan's own interest, as a matter of self-defense, it is evident that one important phase of the American Monroe Doctrine has no parallel in Eastern Asia. The American policy, announced in 1823, followed consistently and effectively ever since, to the effect that no non-American state will be permitted to obtain territory or prejudice the independence and administrative integrity of any American state, has neither been emphasized by the Japanese with respect to China, nor has such a policy been actually consistently pursued in practice. Japan has evidently not been the chief defender of the territorial and administrative integrity of China, as the events of 1915-18 demonstrate.

Had the Japanese Government given more consistent and practical evidence of their desire to take the lead in maintaining the territorial and administrative integrity of China there would perhaps be for Japan very much the same justification for announcing a policy similar, in some respects, to the American Monroe Doctrine. Japan has, in fact, risen to the position of being unquestionably the strongest power, politically, financially, and in a military sense, in Eastern Asia. There can be no question but that the future of China, as well as the periodic conditions of political and economic disorganization which have prevailed there, are of infinitely greater concern to Japan, both in an eco-

nomic and in a political sense, than to any western state. These circumstances have influenced Professor Willoughby to much the same conclusion:[1]

"Japan has, beyond question, the same justification for declaring and supporting an Asiatic 'Monroe Doctrine' to the effect that the development in China of a dominant or strong political control by any foreign Power will be an act unfriendly to herself, that the United States has had in maintaining a similar doctrine with regard to foreign political influence in the Western Hemisphere."

Such a policy, then, if announced and maintained solely for the purpose of preserving the territorial and administrative integrity of China, could hardly be opposed either by China or outside states. In fact, it would be but a more positive action on Japan's part in defense of a cardinal principle already officially accepted by Japan and by all the powers, namely, the postulate of the open door policy which, as at the Washington Conference, guaranteed China against territorial aggression and interference with her internal political administration. The very fact, however, that the United States and Great Britain, particularly, have in recent years manifested no intention to encroach upon China's independence raises the question as to whether the announcement of a Japanese "Monroe Doctrine" for China at this time would be anything but superfluous.

[1] Willoughby, *op. cit.*, Vol. I, p. 376. Cf. Hornbeck, S. K. *Contemporary Politics in the Far East*, Ch. 18, "Japan's Monroe Doctrine for Asia."

Before discussing the question of whether there is at present any proper analogy, especially in an international legal sense, between the so-called "Asia Monroe Doctrine " and the American Monroe Doctrine, it is well to give brief attention to the historical development of that so-called " doctrine " in Japan. Until 1917, it is apparent that the concept had never been contained in any official and formal pronouncement of the Japanese Government. Baron Komura, on returning from Portsmouth, seems to have fathered the idea in an address before the Japanese Diet in which he lamented the growing congestion of population in Japan and proclaimed the necessity of unrestricted liberty of emigration to Korea and South Manchuria. But this was in decided contrast to the circumstances which gave rise to the original enunciation of its presumed prototype by President Monroe in 1823.

The phrase "Asia Monroe Doctrine ", as sponsored by Japanese writers and statesmen, attained greater currency during 1914-1919 than at any other period since its creation. Coincidentally, and significantly, the term had principal vogue just at the time when Japanese policy in China was more aggressive than it has ever been, signalized as it was by the submission of the " Twenty-one Demands " in 1915 and by the attempts of the Japanese Government, during 1916 to 1919, to obtain from Russia, Great Britain, France and the United States a recognition of their desired rôle of paramountcy with

respect to Chinese politics. These policies, as manifested by the Okuma and Terauchi ministries—by the latter also through an effort to prevent the reorganization of an international banking consortium, and to proscribe its loan activities in Manchuria—were not conducive to creating among western states an inclination to recognize, in favor of Japan, a "Monroe Doctrine" for China.[2]

Count Okuma, the Japanese Premier who deserves the credit for initiating the policy manifested by the "Twenty-one Demands", made certain pronunciamentos contemporary with the submission of those demands on China, which, aside from their obvious purpose of softening the natural suspicion of Japan abroad, were intended to create the impression that, by some curious process, they were presented "to

[2] The late Professor J. W. Jenks, in an open letter to the New York *Times*, December 10, 1915, drew attention to these anomalies: "With regard to the alleged analogy between China's position toward Japan and Mexico's position in relation to the United States, I should like to say just this: What is frequently referred to as the Asiatic Monroe Doctrine, if it were for the protection and not for the molestation of China, would not be, I think, unacceptable to Americans who desire to help maintain a lasting peace in Asia. Such a doctrine was, in fact, prescribed and promoted by Mr. Hay and Mr. Root. But the trouble is that certain Japanese who are now advocating what they call a Japanese Monroe Doctrine regarding China inject into their arguments and policies arguments and policies which Americans have never applied nor would they now apply toward our Latin-American neighbors. China is not assisted toward an acceptance of Japanese intervention by Japan's record in Korea and Southern Manchuria. Any extension of political influence of this sort is naturally regarded by China as an assault, deliberately intended upon China's sovereignty."

preserve the peace of the Far East ", and as an act of philanthropy toward China—whose sovereign rights they were to impair. Early in 1915, Count Okuma published a statement to the following effect, which was widely circulated, especially in the press of the United States: [3]

" Western nations have already confessed their failure to be able to assimilate oriental civilization, Japan alone can digest the two. Thus the whole world, pouring its best into the alembic of our minds, will have it transmuted for service everywhere. Our military and naval power will amount to nothing if we fail in our duty to humanity. It will profit us little to acquire all the learning of the west in return. It is more blessed to give than to receive. If Japan rises to her opportunity there is no telling to what greatness she may attain; whereas if she is indifferent to it she can never hope to be a great nation. I firmly believe that our people have the capacity to do this worthy service for mankind, and I urge them forward toward accomplishing it."

Allowing for the meaningless verbiage of much of this from Count Okuma, the quotation suggests the prevalent psychology behind this Japanese assertion of the right to announce a so-called " Monroe Doctrine for Asia ".[4] In 1916, a new impetus to an

[3] *The Chicago Tribune,* May 9, 1915.

[4] Dean Shailer Mathews, of the University of Chicago, upon his return from the orient in 1915, published an article in the *Chicago Tribune,* May 8, 1915, in which he urged Americans to avoid captious criticism of Japan at this juncture, but added his own view of the so-called " Asiatic Monroe Doctrine ": " In thus protecting China, Japan undoubtedly would gain great commercial advantage to which she may be said to be fairly entitled in view of her geographical position. But if Japan plans to control China politically and if, while

assertion of an "Asiatic Monroe Doctrine" on the part of Japan was evident, this time, however, being influenced by the suggestions of certain American financiers who favored American-Japanese coöperation in loan and developmental enterprises in China. The late Judge Elbert H. Gary, head of the United States Steel Corporation, made a tour of Japan in 1916 and is credited with having made statements which were interpreted in Japan as tantamount to offering American financial support in such a manner as to reduce to a minimum the reserved discretion to designate how funds, borrowed in America, were to be invested in China.[5]

Viscount Ishii, however, is to be credited for perhaps the most responsible official attempt to point the

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maintaining a technical integrity of the empire, she makes use of commercial concessions as excuses for interference with Chinese policies she will be very far off from duplicating in Asia the Monroe Doctrine of America." Dean Mathews was writing in the very month of the notorious Japanese ultimatum to China.

[5] A leading Japanese editor is said to have made the following statement to a British newspaper correspondent of wide reputation: "Gary gave the impression repeatedly in Japan, and has given it in his speeches since his return to the United States, that Japan has the right to look on China as a fellow-Oriental state. We have a right to a Monroe Doctrine of the Far East. Gary can see that." (Coleman, Frederic, *The Far East Unveiled,* p. 221.) Baron Shibusawa's "unofficial" mission to the United States in 1916, to secure American capital for Japanese investment in China, met with mixed favor. Coming so soon after the 1915 policies of Count Okuma, there was much scepticism. On the other hand, there was a widespread tendency to accept the announcements of the new Terauchi Ministry at their face value. (Cf. *Proceedings of the Academy of Political Science,* N. Y., Vol. VII, 1917-18, pp. 542, 619.)

alleged parallel between a Japanese " Monroe Doctrine " and the American Monroe Doctrine. After preliminary conversations with Secretary Lansing on September 6, 1917, he proceeded to New York City to give several addresses on Japan's policies, their motives and principles, in China. His motives for doing so at a time when he was representing his country on an important official mission to Washington are explained in his autobiography: [6]

" In utilizing those favorable opportunities, I presented reasons why the principle of the open door and equal opportunity is advantageous to Sino-Japanese trade and consequently why our country desired the unreserved application of that principle all over China, and frankly discussed the possible existence of an idea resembling the Monroe Doctrine, not only in the Western Hemisphere, but also in the East."

In doing this, Viscount Ishii frankly states that, inasmuch as " in the United States, public opinion molded state policy ", it was, therefore, " necessary for a diplomat occasionally, while negotiating at Washington officially, to talk directly to the people ". This was why he made the New York addresses, and in them " further tried in a roundabout way to present the inference of what may be called an Asiatic Monroe Doctrine (*Asia Monroe-shugi*) ".

" Such a matter as the Asiatic Monroe Doctrine is decidedly delicate and it was not without the possibility of causing misunderstanding among the American people, but the whole-

[6] *Gaiko Yoroku,* Ch. VI.

hearted welcome which the American officials and people had accorded to our party supplied the courage for me to dare to discuss such a delicate point."

The circumstances surrounding the despatch of the Ishii Mission to the United States[7] indicate that one of its principal purposes was to obtain, if possible, a recognition from the United States of Japan's claims to "paramount interests"—to use Viscount Ishii's term which he first suggested to Lansing for approval. Such a recognition, according to Ishii, was not necessary to create for Japan a position of tutelage in Eastern Asia: it would, however, be "advantageous". He realized, however, that he would likely have difficulty in obtaining American recognition of any position of Japan in China which would carry the name of an "Asiatic Monroe Doctrine". Consequently, Viscount Ishii believed it wise to sound out public opinion in the United States from the platform before entering upon a discussion of such a proposal with Secretary Lansing. Referring to his New York address of September 29, he made the following assertion on October 1, in the same city:[8]

"In a speech delivered on Saturday night [September 29] I made particular reference to the policy of Japan with regard to China. This reference took the form of a repetition of the pledge and promise that Japan would not violate the political

[7] *Vide:* Ch. VII, Sec. 1.

[8] New York *Times*, October 2, 1917; *The Imperial Japanese Mission to the United States*, 1917 (Carnegie Endowment for International Peace, Washington, D. C.)

independence or territorial integrity of China; would at all times regard the high principle of the open door and equal opportunity. Now I find that this utterance of mine is taken as the enunciation of a 'Monroe Doctrine in Asia'. I want to make it very clear to you that the application of the term 'Monroe Doctrine' to this policy and principle, voluntarily outlined and pledged by me, is inaccurate.

"There is this fundamental difference between the 'Monroe Doctrine of the United States as to Central and South America and the enunciation of Japan's attitude toward China. In the first place, there is on the part of the United States no engagement or promise, while in the other Japan voluntarily announces that Japan will herself engage not to violate the political or territorial integrity of her neighbor, and to observe the principle of the open door and equal opportunity, asking at the same time other nations to respect these principles."

The first paragraph is particularly interesting in view of the fact that Viscount Ishii, in his memoirs, to use his words, " tried in a round about way to present the inference of what may be called an Asiatic Monroe Doctrine ". The second paragraph contains an interpretation of the American Monroe Doctrine which is posited on an assumption, false in itself, that the United States has made no pledge to preserve and protect the territorial integrity and administrative independence of the Central and South American republics. In fact, the Monroe Doctrine was originally proclaimed for that very purpose, as well as a statement of a policy of self-defense.

The principal importance of the Ishii Mission, in its bearing upon the " Asiatic Monroe Doctrine ",

however, lies in Viscount Ishii's official conferences with Secretary Lansing. During the same session in which Ishii proposed to Secretary Lansing that the two countries sign an exchange of notes, in the nature of a declaration of their policies toward China, and that that declaration should contain a recognition of Japan's "paramount interests" or "special intersts and influence" in China, he drew an analogy between Mexico and China by saying that Japan's "interests in China are not different from those of" the United States in Mexico.[9] But his memoirs are not as complete on this point as is Secretary Lansing's testimony before the Senate Committee on Foreign Relations in 1919:[10]

"Then it was, during that same interview, that we mentioned 'paramount interest' and he made a reference to the Monroe Doctrine, and rather a suggestion that there should be a Monroe Doctrine for the Far East. And I told him that there seemed to be a misconception as to the underlying principle of the Monroe Doctrine; that it was not an assertion of primacy or paramount interest by the United States in its

[9] *Gaiko Yoroku,* Ch. VI. Dr. Willoughby: "Japan has the same concern regarding the development of turbulent conditions in China, ... that the United States has had with regard to conditions in Mexico. . . . ." (*Foreign Rights and Interests in China,* Vol. I, p. 376.)

[10] *U. S. Senate Documents, Treaty of Peace with Germany,* Vol. 10, 1919, p. 224. ". . . . Such an Asiatic Monroe Doctrine carries with it no implication of a right upon Japan's part to claim in China economic preferences or rights of political jurisdiction other than those granted to the other Powers. And it does not need to be said that no claim of national interest would furnish ethical justification to Japan to subordinate Chinese national interests, economic or political, to her own." (Willoughby, *op. cit.,* Vol. I, p. 377.)

relation to other American Republics; that its purpose was to prevent foreign powers from interfering with the separate rights of any nation in this hemisphere, and that the whole aim was to preserve to each Republic the power of self-development. I said further that so far as aiding in this development the United States claimed no special privileges over other countries."

Continuing, Secretary Lansing stated to Viscount Ishii that " the same principle should be applied to China, and that no special privileges, and certainly no paramount interest, in that country should be claimed by any foreign power ". From this testimony, which is not contradicted by Viscount Ishii's memoirs, two conclusions are evident: the Japanese envoy sought to obtain from the United States a recognition of a so-called Japanese " Monroe Doctrine " for China, this to be in the form of an assertion of " paramount interests " there; and, secondly, that this proposal was definitely rejected by the American Secretary of State.[11]

[11] I cannot, therefore, agree with the statement of Dr. M. J. Bau that " in recognizing Japan's special interests in China, due to geographical proximity, Secretary Lansing inadvertently extended his recognition to Japan's 'Asiatic' Monroe Doctrine". (Bau, *The Foreign Relations of China,* pp. 249-250. 1st ed.) Dr. R. L. Buell seems to believe that Lansing refrained from contesting the interpretation which the Japanese envoy placed upon the Monroe Doctrine and that he eventually recognized that Japan had a legitimate claim to a similar doctrine in China. He states that the traditional policy of the United States with respect to China was " indirectly forsaken " by the Lansing-Ishii agreement. Dr. Buell evidently confused questions of law with the subsequent tendency of the Japanese, officially or otherwise, to place an oblique interpretation upon the term " special interests," not justified by the evidence which is available

The period from 1917 until the Washington Conference was one in which the Japanese Government, without laying a claim to a right under the rubric " Asiatic Monroe Doctrine ", actually pursued a policy in China which was directed to gaining a position of hegemony, not only in Manchuria, but in China generally. The Terauchi Ministry, which followed that of Count Okuma, gave governmental support to the unscrupulous activities of Mr. K. Nishihara, notorious for the " Nishihara loans " of 1917-18, in a policy which is now well known to have been directed against the re-entry of the United States into consortium loan operations in China, and which was at the same time directed against the consortium itself.[12]

Of recent years, especially since the Washington Conference, the phrase " Asia Monroe-shugi " has become less and less evident in the writings of Japanese students of Far Eastern politics. No foreign office utterances of recent years have included the term, or even sponsored a general policy of assuming the responsibility, for example, as against Soviet Russia, of preserving intact the territorial and administrative integrity of China. Japanese policy with respect to China has latterly been one rather

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from the Lansing-Ishii conferences. (Cf. Buell, *The Washington Conference*, p. 318 and Ch. II, "A Japanese Monroe Doctrine.") Professor C. G. Fenwick also has asserted that Japan obtained " a recognition of her paramount interests in China " in the Lansing-Ishii negotiations. (Fenwick, *International Law*, p. 150.)

[12] *Vide:* Ch. VIII.

of coöperation with the United States and Great Britain, as evidenced in numerous instances of joint representations to the Chinese Government on such questions as extraterritoriality, customs tariffs, and inland navigation on the Yangtze, though, in the nature of the case, the Japanese Government of necessity have had to regard certain problems, particularly in Manchuria, as of peculiar importance to them, requiring, therefore, independent attention. In this period of liquidation of foreign political privileges in China there is no neccessity for the enunciation of a Japanese " Monroe Doctrine " for China.

As for any possible analogy between the implications of the Monroe Doctrine and the so-called " Asiatic Monroe Doctrine " from the point of view of international law, it must be evident that there is none. That which has not yet had the dignity of official and formal pronouncement on the part of the Japanese Government can have no international legal status. The "Asia Monroe Doctrine " is in no sense a " regional understanding "—the term used to describe the Monroe Doctrine in Article 21 of the Covenant of the League of Nations. Whatever may be the status of the Monroe Doctrine in international law—and on this point there is much difference of opinion among the publicists—it may be accepted that, to use the words of Professor Fenwick, " it has obtained at least a semi-legal

character at international law ".[13] Dr. Alvarez, the highly reputed Chilean publicist, has declared that the Monroe Doctrine, while originally a unilateral pronouncement of policy on the part of the United States, has actually become recognized as " a legal international doctrine ", one which contains " principles of American public law ".[14] While it may be admitted that it—or something by the same name—remains a policy of the United States, the interpretation of which is reserved to its originator,[15] there can be no question but that, in its essential postulates, it has become recognized as part of the public law of the Americas. Another contrast between Japan's relation to China, on the one hand, and that of the United States to her Central and South American sister-republics, on the other, needs to be drawn. Whatever the aggressiveness of the policies and programs of the United States in the Western Hemisphere in the last several decades, the fact remains that, through it all, there has been a manifest effort to develop agencies for friendly coöperation, for adjustment of differences by means of pacific settlement of disputes, and for the furtherance of common interests among all states of that hemisphere. The Pan-American Union is an example, and the six Pan-American conferences which have been held between

[13] Fenwick, C. G. *International Law,* p. 148.

[14] Alvarez, A. *The Monroe Doctrine,* pp. 10, 23. (Carnegie Endowment for International Peace, 1924.)

[15] Hughes, Charles E. *Our Relations to the Nations of the Western Hemisphere,* pp. 11-20.

1889 and 1928, with a seventh to be held in 1932, can hardly be characterized, even by the severest critic, as anything but entirely unprecedented examples of good will in international relations.

No such consciousness of identity of interests exists in Eastern Asia, and there is a complete absence, even today, of any such international machinery as would tend to show that China, for example, is at all eager to affiliate with Japan in some form of association of eastern peoples which would permit the latter to lead. It may be added, moreover, that there exists today, as between China and Japan, no bilateral conventions, whether of inquiry, conciliation, arbitration or adjudication, which exhibit an effort to resort to such forms of pacific settlement of international disputes as may arise between them. China and Japan have treaties of arbitration with the United States, but, as between the two of them, none exists.

Nor can there be said to be in Eastern Asia any single state which has occupied for an extended period, or which possesses today, a position of natural economic and financial superiority of the kind which the United States possesses in the Americas. While Japan has been the strongest military power in the East for many years, it is China, on the other hand, which is more comparable to the United States if the measure of the analogy be wealth in natural resources, productive land area, or population. Under these circumstances, China has been unwill-

ing to accept the position of leadership proffered by Japanese writers under the rubric "Asia Monroe Doctrine".

Thus, it would appear that the distinctively individual connotations of the Japanese "Monroe Doctrine for China" are such that they condition any parallels which may be attempted between Japan's position *vis-à-vis* Manchuria and the position of the United States with respect, for example, to Mexico or to Nicaragua. As a matter of fact, it is between Japan's position and policies in Manchuria and those of the United States in Mexico and the Caribbean area that Japanese writers are now more inclined to draw an analogy.[16] Evidently realizing the

[16] The views of Mr. Y. Tsurumi at the Institute of Politics are recorded as follows: "There was a parallel between the American Caribbean policy and Japan's Manchurian policy, but he did not believe Japan's policy towards eastern Asia as a whole could properly be called a Japanese Monroe Doctrine, since Japan does not pretend to protect the integrity of other Asiatic nations, except China; and in protecting China, Japan is willing to coöperate with other groups." (*Report of the Round Tables*, etc., pp. 217-218. Cf. *China Weekly Review*, Sept. 13, 1930, p. 57.) Dr. Blakeslee is reported in the proceedings of the Institute as having supported this same view. In a personal letter to the writer, Dr. Blakeslee has repudiated the report that he had taken such a position: as chairman of the round table, he was merely presenting a common point of view, not necessarily his own. In explaining his position, he writes: "I did point out that the Japanese, who are versed in American international relations, believe that their policies toward China and toward Manchuria are essentially similar to our Monroe Doctrine and Caribbean policy, respectively; and that the best way for an American to understand the Japanese attitude is to realize that the Japanese as a people feel toward China much as Americans feel toward Latin-America, and that the Japanese regard their status and responsibility in Manchuria much as the average American regards our status and responsibility

truth of the statement of Mr. Charles Evans Hughes that the United States has a separate Caribbean policy, a Panama Canal policy, and a Mexican policy, and that " these should be explained, criticized or defended upon their merits " and not confused with the Monroe Doctrine, the Japanese have more recently pointed to acts of intervention of the United States, especially in Nicaragua, as in no wise more justified than would be similar action of Japan in Manchuria. Japanese statesmen apparently realize the implications of Mr. Hughes' statement that " our own right to protect our nationals is quite distinct from the Monroe Doctrine ".[17] The Japanese Government, therefore, have declared, as in 1928, their right to intervene in the domestic affairs of China in Manchuria in order to preserve " peace and order ".

2. *Japanese Intervention in Manchuria.* There has been an evident disinclination on the part of the Japanese Government to justify acts of interference in Chinese domestic politics related to Manchuria by specifically invoking the presumed " right of intervention " as an accepted principle of international law. On the other hand, there has been no concealment of the policy of the Japanese Govern-

in the Caribbean." (Personal letter of June 2, 1931.) Professor P. M. Brown, of Princeton University, rejected both analogies: "He felt that the United States had acted in the interests of the Latin-American countries and the whole world; Japan's policy, however, had been imperialistic."

[17] Hughes, *op. cit.*, pp. 18-19.

ment of undertaking to resort to military intervention for the purpose of preventing the spread of Chinese civil war into the areas adjoining the South Manchuria Railway, and for the avowed purpose of preserving " peace and order " in Manchuria generally. Numerous individual instances of the despatch of Japanese troops, especially across the Yalu river, into the area of southeastern Manchuria which the Japanese refer to as " Yenchi " or " Chientao ", might be cited. These have had for their ostensible purpose the protection of Japanese and Korean nationals from periodic outbreaks of so-called " communistic " agitation which the local Chinese military and police in those areas have been incompetent to keep under control.[18] These, however, while not unimportant locally as raising the question of the right in international law to despatch troops into the territory of another, may well be regarded as exceptional situations which do not raise the more fundamental question of Japanese interference to prevent the full coöperation of the Manchurian provincial governments with the National Government of Nanking.

[18] There are approximately 400,000 Koreans who reside in this region lying just north of the Chosen border in Manchuria. The most notorious of these instances of Japanese military intervention in connection with their Korean nationals here was, of course, that which was associated with the Hunchun uprising of 1920. (*Vide:* Young, A. Morgan. *Japan under Taisho Tenno,* Ch. 21.) There have, however, been several instances of the despatch of Japanese troops across the Korean border to reënforce the Japanese consular police in these areas, the most recent of which occurred in the autumn of 1930. (*Vide:* Young, C. Walter. *Japanese Jurisdiction in the South Manchuria Railway Areas,* Ch. X.)

Nor do they relate to the question of the Japanese assertion of right to interfere for the purpose of circumscribing the area of hostilities of Chinese warring factions, by designating a specific zone in the region along the South Manchuria Railway, beyond the actual areas of *de facto* Japanese jurisdiction, within which no movements of Chinese troops are permitted.

During the civil war in Manchuria, which was precipitated in December, 1925, by the mutiny of General Kuo Sung-lin, a subordinate of Marshal Chang Tso-lin, a situation developed along the Peking-Mukden railway which seriously threatened the very position of Marshal Chang Tso-lin and gave rise to the feeling among Japanese residents that their interests, if not their actual safety, would be prejudiced by the success of that revolt. A limited number of Japanese troops was, therefore, sent from Kwantung and Chosen to Mukden during December, 1925, in order to reënforce the Japanese guards, who are regular soldiers, permanently stationed along the South Manchuria Railway.[19] These events oc-

[19] Japanese garrison troops are permanently stationed in the Kwantung leased territory about Port Arthur, under treaty agreement with China. There is no legal limit upon their number. The right to station Japanese railway guards outside the leased territory along the South Manchuria Railway is somewhat doubtful, although the Japanese Government continue to maintain the right to station them there up to a number of fifteen per kilometer. For a discussion of these two subjects, reference may be made the author's volume: *Japanese Jurisdiction in the South Manchuria Railway Areas,* Ch. X.

curred at the same time as a civil war was being waged around Tientsin, which was not terminated until December 25, 1925, a situation which caused British and American warships to assemble at Chefoo and Tientsin to protect their nationals against possible injury.[20]

The issue thus presented to the Japanese Government was, from their point of view, how best to preserve their "special position" in Manchuria, whether by a policy openly in support of Chang Tso-lin, or by one of compromise with Kuo Sung-lin, or by one of ostensible neutrality, maintained in such a way as to preserve the *status quo* by covering a possible retreat of Chang Tso-lin's troops to Mukden and Kirin, thus preventing the advance of Kuo's troops in pursuit.[21] The latter was the policy chosen.

[20] The writer was as that time residing in Peking, and was in Tientsin and Manchuria shortly thereafter.

[21] Lieutenant-General Y. Takayangi, at this juncture, described the Japanese problem as follows: "Some Japanese at Mukden are for Marshal Chang and others against him. . . . . The primary question is how the special position of Japan in Manchuria should be safeguarded. . . . . In the event of Marshal Chang going under, the whole map of the Three Eastern Provinces would be painted 'Red' . . . . Thus, sympathy should be the only thing for the Japanese to show Marshal Chang. There exists no occasion whatever to challenge him." (*Manchuria Daily News*, December 3, 1925.) *The Peking and Tientsin Times* editorially well-described the Japanese problem as follows: "The position in which Japan has been placed does not admit of any easy solution. The difficulties are obvious. Marshal Chang Tso-lin has dominated the whole of the Three Eastern Provinces for years. He has maintained friendly relations with Japan. He has kept the peace in Manchuria, and facilitated the rapid development which it has witnessed. . . . . In many of the greatest

On December 8, General Y. Shirakawa, commander-in-chief of the Kwantung Garrison, Port Arthur, issued to both Chang and Kuo a statement in which he set forth the Japanese position as follows:[22]

"The Commander-in-Chief of the Kwantung Army need not reiterate that he will strictly observe the attitude of absolute non-interference in the internal trouble in China, in pursuance of Japan's policy. However, in Manchuria, hundreds of thousands of Japanese citizens reside following all sorts of peaceful pursuits. The Japanese investments also run up to an enormous amount. In short, Japan's rights and interests vested in Manchuria are quite immense. Consequently, the Commander-in-Chief of the Kwantung Army can not look on idly, in the nature of his function, whenever these same rights and interests are in danger of getting damaged or jeopardized by a battle and disturbances in or about the South Manchuria Railway Area, the zone patrolled by the Kwantung Army. The contending armies are believed to respect this special position of Japan. Unfortunately, however, in case of the abovementioned danger being imminent, the Commander-in-Chief of the Kwantung Army will be obliged to take such necessary steps as he thinks proper."[23]

Simultaneously, it appears that the entire consular body at Mukden actually made an "unofficial"

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enterprises in this territory he is in partnership with Japanese interests. General Kuo is the portent of an entirely new situation." (December 16, 1925.)

[22] *Manchuria Daily News*, December 9, 1925.

[23] To this warning, Marshal Chang Tso-lin is represented as having made a reply on December 10, in which he asserted that he would assume responsibility for the insurrection and that "Japanese lives and property, together with Japan's interests, will be respected by me and my officers and men." (*Manchuria Daily News*, December 11, 1925.)

request of the Japanese consul-general, Mr. Yoshida, to give them assurances that the Japanese railway guards stationed at Mukden would extend protection to the entire foreign community there, in case of the occurrence of disorders. Thousands of Chinese fled from the native city to take refuge in the Japanese railway town of Mukden. There was no question but that there was a daily danger of a defeat of the troops of Chang Tso-lin along the Liao front, and a consequent movement of Kuo's troops upon Mukden itself. Under these circumstances, the Japanese consul-general issued several statements repudiating any intention of his government to take sides in the controversy itself, but making clear that the South Manchuria Railway and the lives and property of those who were assembled there would be protected.

On December 14, 1925, General Shirakawa issued a second warning to the warring Chinese factions, this time laying down a specific zone of twenty *li* (about seven miles) on either side of the South Manchuria Railway, including the Yingkow line, within which no troops of either side were to be permitted to proceed.[24] The Japanese railway guards were immediately reënforced, bringing the total of Japanese troops in South Manchuria to approximately 10,000—a number well within the limit originally provided for by the agreements of 1905 with

[24] *Manchuria Daily News,* December 14, 1925. Full text: *ibidem,* December 16.

Russia and China.[25] A detachment of Japanese troops, ordered to Yingkow after its evacuation by Mukden troops and its occuption by those of General Kuo, effectively prevented the latter's troops from advancing in pursuit of those of General Chang Tso-lin. Here, as generally, the Japanese policy had the semblance of complete neutrality. In fact, however, the application of the program by which no Chinese troop movements were to be permitted within the seven-mile zone along either side of the South Manchuria Railway operated to favor Chang Tso-lin. At no time during the mutiny were General Chang's troops cut off from their base of supplies and munitions at the Mukden arsenal, which is located on the opposite side of the South Manchuria Railway.[26] On the other hand, it is evident that, in case the Kuo mutiny had been successful, the Japanese Government would have been able to carry out a working arrangement with him *vis-à-vis* Japan's position in Manchuria. The Kuo mutiny collapsed on December 24 with the defeat of his troops at Hsinmintun, not far from Mukden.

[25] Organizations of Japanese residents in Manchuria used this occasion to urge upon the government the adoption of a "new positive policy for Manchuria and Mongolia", which would not stop merely with negative measures undertaken in defense of the South Manchuria Railway itself. (*Ibidem*, Dec. 22, 1925.)

[26] There is some evidence, also that a certain number of Japanese officers and men were obtained from the Mukden garrison to man thirty howitzers for Marshal Chang Tso-lin's troops at Hsinmintun, where the mutineers were eventually turned back, saving Mukden from capture.

If the right of the Japanese Government to station railway guards along the South Manchuria Railway is conceded—and on this subject there is room for controversy, in view of the obviously temporary intent of the Sino-Japanese agrement of December 22, 1905, which granted the right [27]—the Japanese were within their rights in sending reënforcements to Manchuria at this time, inasmuch as the total of troops stationed along the railway had been maintained for some time considerably below the maximum of fifteen per kilometer permitted by the 1905 agreement. On the other hand, the Kuo mutiny furnished the occasion for the delimitation of a zone, beyond the South Manchuria Railway areas themselves,[28] within which Japan would not permit any Chinese troop movements. As a matter of fact, the several foreign consuls at Mukden, including the American and British, seem to have looked with favor upon the efforts of the Japanese Government during the Chang-Kuo hostilities to undertake responsibility for protecting the lives and property of foreigners at Mukden and elsewhere in South Manchuria. There was no official protest from any foreign government. As for the attitude of the Peking Government—and it is to be noted that the government then in power was that which had been estab-

[27] *Vide: Japanese Jurisdiction in the South Manchuria Railway Areas,* Ch. X.

[28] These areas, except for the expansions in the railway towns and at Fushun and Anshan, are generally not large, varying from fifty to three hundred feet on either side of the tracks. (*Vide: Japanese Jurisdiction in the South Manchuria Railway Areas,* Ch. V.)

lished after the defeat of Li Ching-lin, Marshal Chang Tso-lin's former ally—it is noteworthy that they made no actual protest. On December 31, 1925, Minister Yoshizawa at Peking presented to the *Wai Chiao Pu* a note in which, *inter alia,* he declared that " the stationing of Japanese troops in Manchuria, which is provided for in treaties, has the object of giving effective policing in the areas along the South Manchuria Railway and protection to life and interests of the Japanese people "; that the disturbances attending the Kuo mutiny justified the despatching of Japanese reënforcements to the railway guards, and that this was " merely for the purpose of replacement of the original Japanese garrisons there ".[29] To this the Chinese Government replied on January 8, 1926, stating that " with reference to the stationing of Japanese troops in Manchuria, it is hoped that the Japanese residents and soldiers there will strictly follow the policy of the Japanese Government of absolute neutrality. As peace and order are being now gradually restored, the additional Japanese troops sent there should be immediately withdrawn so as to avoid unwarranted suspicions ".[30] As a matter of fact, the Japanese reënforcements were withdrawn during January, 1926, practically restoring the *status quo ante.*[31]

[29] *The Peking Leader,* January 13, 1926. The regular semi-annual replacement was to have taken place in January-February, 1926.

[30] *Ibidem.*

[31] Some time later, General Chang Tso-lin made a formal visit to Port Arthur, on which occasion he expressed his gratitude to Gov-

The Japanese policy during this period was described by Baron Shidehara, the Foreign Minister, in an address of January 21 before the Diet. Referring to the Chang-Kuo hostilities in Manchuria, he stated that the policy of the government had been to maintain an attitude of strict neutrality. With regard to China as a whole, Baron Shidehara stated that his government had "followed the definite and settled policy" of "absolute non-interference in China's domestic affairs, and the safeguarding of Japan's rights and interests by all legitimate means at our disposal". With regard to Manchuria, however, he asserted that, since "it is a well-known fact that Japan possesses essential rights and interests both corporeal and incorporeal in Manchuria and Mongolia", special measures were necessary, especially in connection with protection of the South Manchuria Railway. Japan's "tangible" interests in Manchuria, he stated, were mainly "to be found along the line of the South Manchuria Railway". Her "intangible" interests there had not been materially affected by the situation brought about by the Kuo mutiny. He concluded with this statement

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ernor Kodama of Kwantung Province and General Shirakawa, commandant of the Japanese garrison, for "the measures adopted by the latter which saved his position against the onset of Kuo Sung-lin". (*Gaiko Jiho* [*Revue Diplomatique*], June, 1927; translated in the *Peking and Tientsin Times*, June 28, 1927.) General Chang is said to have indicated his willingness on that occasion to grant to the Japanese special privileges in Manchuria. General Shirakawa, later became Minister of War in the Tanaka Cabinet.

of the "friendship policy" of the Wakatsuki Ministry, policy, which, as will be noted later, was far more liberal and justifiable in law and under the treaties than a subsequent pronouncement of Premier General Baron Tanaka:[32]

"No doubt the complete tranquility of the whole region of the Three Eastern Provinces undisturbed by any scourge of war is very much to be desired in the interest of the native population, as well as of the Japanese residents. It is, however, a responsibility that properly rests upon China. The assumption of that responsibility by Japan without just cause would be manifestly inconsistent with the fundamental conception of the existing international relations, with the basic principle of the Washington treaties, and with the repeated declarations of the Japanese Government. By taking such course we would forfeit our national honor and pride once for all. In no case, and by no means, can we be party to so improvident an action."

No occasion for conspicuous intervention of Japanese troops in Manchuria then occurred until the spring of 1928. A very important change had come about in the meantime in the political situations in both China and Japan. The Nationalist armies of the Kuomintang had invaded Shantung province in April, 1927, causing the Japanese Government to despatch troops to Tsingtao and Tsinan

[32] *The Peking Leader*, January 24, 1926. In Baron Shidehara's statement of Japan's China policy one year later, he emphasized the same point, namely, Japan's duty to "respect the sovereignty and territorial integrity of China and scrupulously avoid all interference in her domestic strife". (*Foreign Policy Association, Info. Service*, Oct. 12, 1927, "Recent Japanese Policy in China".)

for the announced purpose of furnishing adequate protection for the lives and property of Japanese nationals in and about that city.[33] A few weeks before this a political change in Japan had enabled General Baron Tanaka, a Choshu clan leader, formerly Vice Chief of the General Staff, Minister of War in three cabinets, and leader of the Seiyukai since 1925, to form a cabinet. General Tanaka became Premier and Minister for Foreign Affairs. In announcing the formation of his cabinet, he had advocated a policy which suggested international coöperation to intervene in China for the purpose of stopping so-called " communistic activity ".[34] The Shantung expedition had met with strong protests from both the Peking and Nationalist governments, and evoked considerable criticism in Japan. In June, 1927, Premier Tanaka convoked an Oriental Conference, including numerous Japanese officials holding China posts, which met in Tokyo, and gave special attention to the government's proposals for a new policy *vis-à-vis* Manchuria. Out of this came the so-called " positive policy " of the Seiyukai Ministry under General Baron Tanaka, which, as stated in Premier Tanaka's announcement of July 7, was based on the fundamental principle of regarding Manchuria and Mongolia as distinct from other

[33] Japanese troops were despatched by boat from Dairen in the Kwantung leased territory. The writer was at that time at Dairen.

[34] *Foreign Policy Association, Info.* Service, Oct. 12, 1927; *Japan Advertiser,* April 17, 1927.

parts of China for the purpose of applying Japan's China policies. The new Manchurian policy was outlined as follows:[35]

"Since Manchuria and Mongolia, particularly the Three Eastern Provinces, have an important bearing upon the national defense and existence of this country, we must devote especial attention to those regions. We feel, moreover, particular responsibility as a neighbor for making them suitable for the residence of both Japanese and foreigners by the preservation of peace and their economic development.

"The stimulus of the economic activities of Japanese and foreigners alike in both the southern and northern parts of Manchuria and Mongolia, based upon the principles of the Open Door and equal oportunity, we hold to be instrumental in accelerating the peaceful development of those regions and we should act in accordance with this principle in safeguarding our already acquired rights and interests and in solving pending questions.

"I believe that it will be best to leave stabilization of the political situation in the Three Eastern Provinces in their own hands. Any plan which will respect our special position in Manchuria and Mongolia and devise measures for stabilizing the political situation there will receive the due assistance of the Japanese Government.

"If disturbances spread to Manchuria and Mongolia, and as a result, peace and order are disrupted, thereby menacing our

[35] *Foreign Policy Association, Info. Series,* Oct. 12, 1927, pp. 239-240. Cf. The *Peking Leader,* July 9, 1927; *Manchuria Daily News,* July 8, 23, 1927. During July-September, Minister Yoshizawa conducted at Peking, especially with the late Lieutenant General Yang Yü-t'ing, negotiations in order to secure certain railway construction contracts, especially that for the Kirin-Huining railway. Other matters pressed were the land lease and interior residence question, the opening of a new Japanese consulate at Maoerhshan and questions pertaining to "parallel railways."

special position and rights and interests in those regions, we must be determined to defend them, no matter whence the menace comes, and take proper steps without loss of time in order to preserve the regions as lands for peaceful habitation and development equally to Japanese and foreigners."

Of importance here is the distinction drawn between Manchuria and other parts of China for the purposes of applying the general China policy of the Japanese Government. Not only Japan's "rights and interests" in Manchuria, but her "special position" there, were to be emphasized and defended against any possible menace—whether arising in China, or from the outside, presumably to the north.[36] The statement was a prelude to the action taken by the Tanaka Ministry in the spring of 1928, which is the most conspicuous case of intervention in Chinese domestic affairs of the last several years.

This Japanese intervention, or "preventive intervention"—to use a term familiar to Americans—

[36] Except for the Japanese intervention of 1928, and the lavish expenditure of funds in connection with the South Manchuria Railway, the so-called "positive policy" of the Tanaka cabinet was hardly different in kind from previous Japanese policy *vis-à-vis* Manchuria: in 1927, during the Wakatsuki Ministry in Japan, the Japanese officials in Manchuria, responsible for details, actually pressed for a solution of the same outstanding questions, such as the interior residence and land lease questions, the Kirin-Huining railway question, the several questions related to the construction of independent Chinese lines in Manchuria, the Maoerhshan (Linkiang) consulate question, and currency questions. (*Vide:* Young, "Sino-Japanese Interests and Issues in Manchuria", *Pacific Affairs,* Dec. 1928, pp. 14 ff.) Cf. Kawakami, K. K. "Manchuria: Crux of Chino-Japanese Relations", in *Foreign Affairs* (N. Y.), April, 1928; the *Japan Chronicle,* Jan. 26, 1928; *Current History,* Jan.-July, 1927; *Far Eastern Review,* May,-Oct., 1927.

came about in the spring of 1928 as a result of the movement of the Nationalist armies through Shantung toward Peking. Japan made no effort to prevent the Nationalist armies from occupying Peking itself, which occurred in June. On May 18, however, the Japanese Government announced its policy of maintaining " peace and order " in Manchuria as a whole by prohibiting the movement of Nationalist troops beyond the Great Wall:[37]

" The Japanese Government attaches the utmost importance to the maintenance of peace and order in Manchuria and is prepared to do all it can to prevent the occurrence of any such state of affairs as may disturb that peace and order or constitute the probable cause of such a disturbance. In these circumstances should disturbances develop further in the direction of Peking and Tientsin and the situation become so menacing as to threaten the peace and order of Manchuria, Japan may possibly be constrained to take appropriate, effective steps for the maintenance of peace and order in Manchuria."

In the entire relations of Japan and China with respect to Manchuria it would be difficult to find so strong and definite a statement of Japanese policy as this: here, for the first time, the Japanese Government undertook to intervene with the whole of Manchuria as the object of that intervention. That statement of policy is in distinct contrast to that of Baron Shidehara, expressed for the Wakatsuki Government in January, 1926. The latter did consider Manchuria as a region which, on account of Japanese " corporeal and incorporeal " interests

[37] *Current History*, July, 1928, p. 702.

there, required special attention and perhaps a different program of positive action, but it clearly repudiated any claim of right to undertake the responsibility for maintaining peace and order there. Such a policy as announced by the Tanaka Government in May, 1928, had been specifically branded by the Wakatsuki Government in 1926-27 as "manifestly inconsistent" with Japan's responsibilities under the Nine-Power treaty of the Washington Conference and contrary to "the repeated declarations of the Japanese Government".

In view of this entirely unprecedented announcement of policy by the Tanaka Government, the new Nationalist Government of China replied on May 30, 1928, that they were quite willing to assume responsibility to maintain peace and order in Manchuria, this being a responsibility which, declared the note, "rests solely with the Nationalist Government", continuing:[38]

"These measures not only constitute interference in China's domestic affairs, but also a flagrant violation of the principle of mutual respect for territorial sovereignty, a principle well established in international law. Such measures the Nationalist Government can never recognize. It is the earnest hope of the Nationalist Government that the Japanese Government, for the maintenance of the permanent friendship of the two countries, will avoid actions that would impair the development of amicable relations."

Shortly thereafter, the Manchurian troops of Marshal Chang Tso-lin were forced to retreat beyond the

[38] *Current History*, July, 1928, p. 702.

Great Wall. In June, Chang Tso-lin himself left for Mukden in a private railway car. Just before the train entered Mukden, and as it was passing through the viaduct under the South Manchuria Railway, he was killed by the explosion of a contact mine which had been placed just below the South Manchuria Railway tracks. The sequel, as is well known, was the short period of uncertainty at Mukden, following which the toga of the murdered dictator of Manchuria was given to his son, Marshal Chang Hsueh-liang, who has remained in authority at Mukden ever since, and who in 1930 played so conspicuous a part in preventing another outbreak of civil war in North China by throwing in his lot for Nanking and unification.

Japanese intervention at this juncture was not made effective by actual resort to military measures. Such would have been unnecessary as the Nationalist troops made no attempt to enter Manchuria. Within two months after the murder of Chang Tso-lin, however, the son, Marshal Chang Hsueh-liang, was negotiating with Nanking for an agreement whereby Manchuria would become nominally subject to the political administration of the Nationalist Government, but under conditions which would permit of a very large measure of local autonomy. At this juncture, the Japanese Government, early in August, 1928, sent Baron Gonsuke Hayashi as special envoy to Mukden, with the declared purpose of offering "advice" to Marshal Chang to refrain from placing

Manchuria under the authority of Nanking.[39] Under these circumstances, the Mukden Government were constrained to postpone an announcement of their loyalty to the government which had been recognized by all the principal powers as the Government of China. Dr. C. C. Wu, the Chinese Minister at Washington, made repeated public statements in the summer of 1929 in which he declared that the action of the Japanese Government, in proffering this " advice " to Marshal Chang Hsueh-liang, was " a flagrant violation of China's sovereignty ".[40] He declared that Japan's action was in violation of the Washington Conference treaty, which had pledged Japan not to impair the territorial and administrative integrity of China, or interfere with domestic affairs, and asserted that " a protectorate will be established in Manchuria, and later annexation ".[41] Neither of these prophecies proved true, however, inasmuch as the Japanese Government made no objections when, on December 29, 1928, the Mukden

[39] The Japanese action at this time was intimately related with the action of the Nationalist Government, taken on July 19, in announcing the unilateral abrogation of the Sino-Japanese commercial treaty of 1896. Japan feared that to permit the Chinese Government to abrogate treaty rights would constitute a precedent which, especially with regard to extraterritoriality, would be particularly obnoxious with respect to Manchuria. The whole question of treaty rights, including the Sino-Japanese treaty and notes of 1915, was involved. (*Vide:* Young, " Sino-Japanese Interests and Issues in Manchuria ", *Pacific Affairs*, Dec. 1928, pp. 5-6; The New York *Times*, July 23, 1928.)

[40] The New York *Times*, August 19, 1928.

[41] The *Boston Transcript*, August 18, 1928.

Government raised the " White-Sun " flag of the Nationalist Government and telegraphed Nanking that they had never opposed the fundamental principles of the late leader of the Kuomintang, Dr. Sun Yat-sen.[42]

Thus passed this the most flagrant instance of Japanese " preventive intervention " in Manchuria since the Russo-Japanese war. Realistically considered, it was perhaps a mixed evil: although it is highly improbable that the Nationalist armies had had any definite plan of campaign to invade Manchuria in the spring and summer of 1928, such an invasion would probably have retarded, rather than hastened, the unification of China under the banner of the Kuomintang. Since that time the Mukden Government, under Marshal Chang Hsueh-liang, has been able to consolidate its strength, even to such a degree that, between September and December of 1930, it was the policy and action of the " Young Marshal of Manchuria ", supported by his military strength, which enabled him practically to dictate the program of unification for the whole of North China.

These developments, however, could hardly have been anticipated by the Japanese Government, and, when their declaration of intention to prevent any Chinese civil war from spreading to Manchuria was made in May, 1928, and, more evidently, when Marshal Chang Hsueh-liang was " advised " to desist

[42] *China Weekly Review*, January 5, 1929.

from effecting a union with the recognized government at Nanking, that declaration of policy was, as declared in the Chinese Government's statement of May 30, 1928, an instance of " interference in China's domestic affairs " and a " violation of the principle of mutual respect for territorial sovereignty ". Whether such action was justified as a matter of national policy may be left to the reader to judge; its justification in international law—for it was undertaken without treaty right—rests solely on the so-called " right of intervention ".[43]

[43] Intervention, when viewed from the point of view of the state intervening, is frequently termed " interposition " by the publicists. This term is used to describe a resort to military measures in the territory of another state, short of war, which are undertaken temporarily in order to provide for the safety and protection of nationals residing there, without any intent to interfere in the purely political affairs of the area concerned. As a matter of fact, the same situation is frequently termed " intervention " and " interposition ", depending on the point of view of the critics. (Cf. Hyde, C. C. *International Law,* Vol. I, p. 69; Howland, Charles P. *American Relations in the Caribbean,* p. 296.) The term " preventive intervention " or " preventive interposition " is generally used to denote state action taken, in the face of an immediate and vital necessity, for the protection of nationals abroad, the resort to military measures being justified on the ground that, in the absence of such action, an irreparable damage might have been done.

Just what are the grounds on which the so-called right of intervention can be justified under international law is a highly controversial question, on which there is no general agreement, either among states or the publicists. Certain states and publicists have denied that there is, properly so-called, any " right of intervention " of one state in the domestic affairs of another. A resolution presented at the Pan-American Conference held at Havana, Cuba, in 1928, was to the effect that " no state has the right to intervene in the internal affairs of another ". On the other hand, Secretary Charles Evans

For our purposes here, it is important to reëmphasize the claim here made by the Japanese Government to exercise a reserved right of tutelage over the Mukden Government to preserve the "peace and order" of Manchuria as a whole, that is, a claim of right not restricted to Japan's tangible vested proprietary interests in the South Manchuria Railway and the Kwantung leased territory.

With the defeat of the Tanaka Government, and the establishment of the Hamaguchi Ministry in 1929, Japanese policy with respect to Manchuria

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Hughes contended that "it is the principle of international law that in such a case [referring to a situation 'where government itself is unable to function'] a government is fully justified in taking action . . . . for the purpose of protecting the lives and property of its nationals". (Howland, *op. cit.*, pp. 298-299.)

Professor Hyde confines the term "intervention" solely to "interference by a state in the domestic affairs of another in opposition to its will and serving by design or implication to impair its political independence". (Hyde, *op. cit.*, Vol. I, p. 117.) Others use the term to include the resort to military or other means to provide for protection of citizens abroad. John Bassett Moore has included within the bounds of justifiable intervention state action taken "for the protection of its citizens in foreign lands". (Moore, J. B. *American Diplomacy*, p. 131. 1905 ed.) Professor Borchard justifies interposition in behalf of citizens abroad who have been deprived, in the courts of that state, of the normal and average safeguards of judicial procedure, thus being prevented from obtaining adequate redress for wrongs inflicted upon them. (Borchard, E. M. *The Diplomatic Protection of Citizens Abroad*, p. 13.) Some publicists have attempted to distinguish "political" and "non-political" intervention, denying the validity of the one, while affirming the other. (Hodges, H. G. *The Doctrine of Intervention*, Chs. II and II.) Professor Stowell would apply a "rule of reasonableness", leaving it to the uncertain force of world opinion to decide the issue of legality. (Stowell, E. C. *Intervention in International Law*, p. 455.)

returned to that of the Wakatsuki Ministry of 1926-27. Baron Shidehara, who has served as Minister for Foreign Affairs under the Hamaguchi Ministry, —acting as premier *pro tempore* during the incapacity of Mr. Hamaguchi after his lamentable injury at the hands of a misguided agitator—and who has continued to serve as Foreign Minister since the inauguration of the Wakatsuki Ministry in the spring of 1931, consistent with his former " friendship policy " toward China, has made no effort to reaffirm the tenets of the strong Manchuria policy of the Tanaka Government. On the contrary, Baron Shidehara has repeatedly reaffirmed the policy of encouraging coöperation between Japanese and Chinese in all forms of economic enterprise in Manchuria. In the face of criticism of the opposition that his policy is " weak "—the chronic lament of a certain section of the Japanese vernacular press whenever it seeks to criticize China policy—he has replied that it is not weak but wise. The appointment of the distinguished statesman and diplomat, Count Uchida, a former ambassador to Washington, as president of the South Manchuria Railway Company has been widely acclaimed in both Japan and China as the harbinger of a new era of Sino-Japanese relations *vis-à-vis* Manchuria. Whether the Japanese Government will continue to claim a " special position " in one or more of the intangible forms in which such a claim of right has been announced in the past, or whether there will be a frank willingness to accept Japan's

" special position " as the quantitative total of her treaty and legal rights in Manchuria, remains to be seen.

3. Japanese Treaty Rights in Manchuria. To include within a brief summary the total of Japan's treaty rights in Manchuria would be patently impossible. These are so numerous, so diversified, so complex and so controversial that it would be hazardous to attempt anything but a summary which draws attention to the general categories of those treaty rights, and which emphasizes the most important of them. Of these, the more important are the following:

1. The right to continue in possession of the Kwantung leased territory until 1997, under the terms of the Sino-Japanese treaty and notes of May 25, 1915.

2. The right to continue in possession of the South Manchuria Railway and the Antung-Mukden Railway with a limited jurisdictional right in the so-called " railway zone ", the lease, or concession periods, to expire in 2002 and 2007, respectively.

3. A body of railway concession contracts, obtained by the South Manchuria Railway Company, the Yokohama Specie Bank, the Bank of Chosen, etc., supported by basic Sino-Japanese agreements, granting prior options to construct particular railways for the Chinese in South Manchuria. Generally, these options apply only in case the Chinese do not see fit to build these railways with their own capital.

4. A body of industrial concessions, such as for the operation of the Fushun collieries and the Anshan iron mines, these being associated, in the main, with the South Manchuria Railway Company.

5. A group of jurisdictional rights, which the Japanese Government, under agreements with the Chinese Government, are authorized to exercise over their own nationals, including the Koreans, in Manchuria. These include Japanese general extraterritorial rights, granting a certain immunity from Chinese judicial process, and provide for Japanese jurisdiction in "ports" opened to international trade and residence, and, more important, in the so-called "railway towns" of the South Manchuria Railway areas.

What our inquiry in previous chapters has, perhaps, demonstrated is that for Japan's claims to a "special position", "special rights and interests", "special interests and influence", or "vital interests" in Manchuria there is no tangible and generally accepted grant of authority, either under the treaties, or under international law. Far less can there be any justification today for applying either the terms "sphere of influence" or "sphere of interest" in favor of Japan in any part of Manchuria. The term "protectorate" has always been inapplicable to Manchuria.

The only sense, then, in which the term "special rights and interests", or the term "special position" in Manchuria can be justified in favor of Japan in Manchuria, if the basis for that justification be international agreements, especially with China, is to use such terms as exactly synonymous with Japan's *legal position* in Manchuria. So far as the terms have legal meaning today, the following quotation from the American Minister at Peking to

the Department of State at Washington is as appropriate now as when it was written in 1917:[44]

". . . . While we have no intention of pursuing an obstructionist policy towards Japan, the so-called 'special position' of Japan in Manchuria has not yet been recognized beyond the specific grants and concessions, the sum total of which makes up what may be called the legal position of Japan in that region.

". . . . It follows from the above that any rights and privileges which Japan may claim in Manchuria cannot be deduced from an abstract conception of a 'special position' there, but must be shown as flowing from particular grants and concessions; and that the latter cannot be admitted to have superseded prior rights or concession held by others which have not been voluntarily given up."

Japan's claim to "special interests", whatever may have been its justification in law before the Washington Conference, no longer has legal significance. Legally, Japan's position in Manchuria is *quantitatively*, not *qualitatively*, different from that of other foreign states. What survives, and what has, at one time or another been generally recognized by other foreign governments, is the fact that Japan possesses, on account of the base and substance of her legal rights in Manchuria, resulting in a sum total of concessions, grants, privileges and treaty rights, associated, in the main, with the South Manchuria Railway, a special diplomatic concern in developments in Manchuria, whether economic or political. This, however, may better be regarded as

[44] *U. S. For. Rels.*, 1917, p. 171.

a sort of diplomatic right and responsibility, not defensible in international law or the treaties with China or with other powers, but, nevertheless, existent, simply on account of the fact that Japan has territorial possessions which are actually contiguous to Manchuria, and because no foreign state has vested proprietary interests in Manchuria which are comparable to those of Japan.

To recognize, tacitly, this position of Japan with respect to Manchuria is not to sacrifice the unquestioned rights of free competition in trade and capital enterprises permitted to the nationals of all foreign states under the open door contract, which, Japan, as all other states, including China, pledged at the Washington Conference to observe in future. Japan's "special position" in Manchuria, therefore, cannot be considered under the treaties or in international law as an exclusive one. For the future, it would be well to recognize that such terms as Japan's "special position", "special rights and interests", and the like, are devoid of international legal significance—being rather but utilitarian, and perhaps questionably that, in diplomacy.

During the last two or three years, the Japanese Government have been inclined to stress the necessity of insisting on the observance of Japan's "treaty rights" in Manchuria. That policy should encourage the student to consider, in a given case, just what are those "treaty rights" involved. The time has not yet come when Japan, convinced of the

inadequacy of a policy of mere insistence on the continuation of treaty rights of a former day, manifests an intention to concede that certain of these treaty rights are, in themselves, antiquated and out of accord with the spirit of the times, and, in consequence, indicates a willingness to reconsider those agreements, and to substitute for them an entirely new treaty basis for Japanese enterprise in Manchuria. True Sino-Japanese coöperation—so frequently proclaimed as the *sine qua non* of Japanese policy with respect to Manchuria—is impossible without an intention to look to those treaty rights from which a crop of long-lived animosities has been produced, and to do so with a courageous determination to rectify mistakes of a diplomacy which today is under criticism.

APPENDIX A

Ishii on "Special Interests"

The recently published memoirs of Viscount Ishii Kikujiro in Japanese, under the title of *Gaiko Yoroku* (*Notes on Diplomacy*), has made available to interested students and statesmen new materials on the negotiations between Viscount Ishii and the late Robert Lansing which produced the agreement that bears their names. Reviews of this book, with liberal translations from the original, have also appeared in widely-read American publications. There is, however, no English-language translation of Viscount Ishii's book available. Believing that these memoirs must contain useful materials which would assist in the task of placing an impartial interpretation upon the meaning in international law of the Lansing-Ishii agreement, and of such terms contained therein as "special interests", the writer has secured a reliable translation, by a Japanese scholar, of the chapter in those memoirs which bears particularly upon the Lansing-Ishii agreement.

Viscount Ishii published this particular material in the hope that his private interpretation of the questionable terminology of the Lansing-Ishii agreement might be properly understood and widely disseminated. This, then, is testimonial evidence, evi-

dence which cannot be overlooked by an impartial student. To present that evidence can hardly be interpreted as an injustice to Viscount Ishii or to Japan. Evidently, these memoirs have not the stamp of official approval of the Japanese Government, nor can the testimony contained therein be interpreted as other than the expression of Viscount Ishii's private views.

The author has, therefore, reproduced below a paraphrase and epitome of Chapter VI ("Japan's Special Interests in China") of Viscount Ishii's book, *Notes on Diplomacy,* an earnest attempt having been made to present Viscount Ishii's ideas in as true a rendering of the original as is possible. This has not been easy, partly because of the inherent difficulty of expressing Japanese ideas in English, and partly because of the very obscurity of essential ideas developed by the viscount. Consequently, this account is not a verbatim translation of all of the original. Rather it is an attempt to restate correctly the ideas expressed in the original, with such direct translation as may be necessary the better to present Viscount Ishii's ideas in phrases for which he is authority. Parenthetical materials are the author's own insertions. Quotations are indicated. Omissions are noted by dots.

Unless otherwise noted in context, the following equivalents in the English and Japanese languages have been used: special interests, *tokushu riyeki;* interests, *riyeki;* spheres of influence *seiryoku han-i;*

territorial integrity, *ryodo hozen;* contiguous regions, *setsujo chiho.* Japanese scholars assert that the Japanese expression " *rigai kankei* ", which is translated as " special concern ", has no exact equivalent in English.

Chapter VI. Japan's Special Interests in China.

Section 1. Origin of Japan's Special Interests. Article I of the first Anglo-Japanese treaty of alliance (1902), here quoted in full, recognized that Great Britain had " special interests " in China and that Japan had " special interests " in Korea, in addition to certain " interests " in China. " At first the British Government appears to have thought of stating in a simple manner that Japan had special interests in Korea, while Great Britain possessed them in China, but from Japan's point of view there were reasons that it could not have been so simply stated." Korea had been the historic road of invasion into Japan. After the tripartite intervention of Russia, Germany and France to compel Japan to retrocede the Liaotung, following the Sino-Japanese war, these powers each obtained territorial footholds in China, especially Russia in the Liaotung peninsula. Japan was, therefore, compelled to protect herself by securing a declaration of non-alienation of Fukien province, which fell short of assuring Japan full protection. The foreign military strongholds on the Chinese mainland materially altered the historic rule that Korea was the sole source of invasion of Japan. " Thus it became imperative that Japan should take into consideration not only Korea but also China to guarantee her own security. That China, as much as Korea, in this manner began to bear such inseparably intimate relationship with Japan opened a new page in Japan's diplomacy. Precisely here was the reason why, at the time of the conclusion of the Anglo-Japanese Alliance

Japan could not view China in as simple a manner as British authorities conjectured." Hence, Japan had to take the position that she possessed "grave interests superior to those of other powers in Korea" and also "special interests" in China "which she will not concede to any European or American power". Thus Great Britain came to recognize the Japanese claim in the first Anglo-Japanese Alliance of 1902.

"The first appearance in an international public document of Japan's 'special interests' in China was in the Anglo-Japanese treaty of alliance. In other words the first foreign power which openly recognized Japan's special interests in China was Great Britain." Then followed the Franco-Japanese and the Russo-Japanese treaties of 1907 which gave similar recognition to Japan's special interests in China. "Thus only Germany and the United States remained, but the World War came without an opportunity for negotiation with Germany. An opportunity to try such a negotiation with the United States did not come readily. In 1915, with respect to the several Sino-Japanese agreements, the United States, although she made reservations not to accept restrictions, avoided all actions which appeared to recognize our special interests." (Here is a digression on the Monroe Doctrine of the United States and President Wilson's "deep-rooted opposition to spheres of influence established by the powers in China".)

Section 2. The American-Japanese Joint Declaration. (1) *Japan Despatches War-Mission to America.* Viscount Ishii was, at such a juncture, delegated to go to the United States as the head of a "war-mission". Balfour and Viviani had preceded him, their missions being only congratulatory upon the entrance of the United States into the war. Ishii's was also to "attempt an exchange of frank opinions between American and Japanese responsible persons on the Chinese situation, and to make some headway toward an understanding". . . . The Japanese Government merely indicated to him

a "general policy", having given Viscount Ishii no specific instructions. He reached Washington early in September (1917), having had a wholehearted welcome at Honolulu and San Francisco *en route*. The United States, to his surprise, was "boiling with war spirit" . . . . Ishii met President Wilson, senators and representatives, etc. . . . . In his first conversation with President Wilson, the latter emphasized that the United States had no other concern in China than the policy of observing the "open door and equal opportunity" and that he was personally opposed to the establishment of "spheres of influence" in China. Ishii replied that the policy of "spheres of influence" was first established by Russia and Germany in Manchuria and Shantung, but, having adhered to the Hay policy of the "open door", they would not dare to close the door to the trade of other nationals. These policies were inconsistent. Japan, on the other hand, since the Russo-Japanese war, had not hesitated to "defend the principle of the open door and equal opportunity" . . . . Wilson desired Ishii to discuss the matter with Lansing.[1]

"That day, I returned to the hotel and composed a cable, reporting to the Government the outline of my general conversation with President Wilson and requesting opinion on the question of spheres of influence in China. Unlike the questions of spheres of influence in other continents or areas, the question of spheres of influence in China was initiated when, after the tripartite intervention, Russia leased Liaotung in Manchuria and Germany occupied Kiaochow Bay in Shantung, as a coercive measure which appeared as a precursor to the partition of China, and, as a result, not only encroached upon China's sovereignty, but also infringed rights acquired by powers through treaties concluded with China, and in the end provided for the danger of provoking disputes between the powers."

[1] *The Foreign Relations of the United States* for 1917 is silent on Viscount Ishii's personal interviews with President Wilson.

"Thus, in order to provide effectively for the peace of the Far East, the abolition of spheres of influence at the earliest possible date was desirable. There was no necessity, from my point of view, of preserving such a phenomenon inconsistent with the times. From Japan's viewpoint especially, in order to melt foreign suspicions, there was reason to adopt it as a wise policy to forestall other powers by advocating its abolition." . . . . Japan had been accused of violating the open door declarations of 1899 in South Manchuria, and there had been a tendency of other powers to imitate Japan. Distance of Europe and America from the China market gave Japan natural commercial advantages, and thus the policy of the open door actually operated to favor Japanese competition. The "spirit of dependence" of some Japanese in South Manchuria, who sought to secure special favors from their government, had been prejudicial to the development of a healthy commercial position there. To protect them would be an unwise state policy. "There is no wiser policy than to throw Manchuria open and to enforce the principle of equal opportunity *vis-à-vis* all nations." . . . . Viscount Ishii, therefore, in order to meet President Wilson's wishes to "abolish spheres of influence" in China, thought this a "splendid opportunity" to endorse it and to plan for its future realization. "Such was the reason why I cabled that it was well to give satisfaction to the other side by endorsing President Wilson's proposal to abolish spheres of influence and to create thereby an incentive for their endorsement of our own contention."

(2) *The American-Japanese Negotiations.* "I waited in vain for instructions in answer to my cable. I learned that Foreign Minister Motono, upon receiving my proposal, consulted with the Foreign Relations Commission (*Gaiko Chosa Kai*) and a prolonged discussion followed, the majority entertaining considerable anxiety with regard to the abolition of spheres of influence, and a large number rather inclining to

disapprove of it. Without waiting for the Government's instructions on this question, therefore, I was compelled to enter upon the negotiations with Secretary Lansing on the Chinese question."

(Following is a verbatim account of the summary which Viscount Ishii has given of his conversations with Secretary Lansing on the first day of the negotiations.)

Ishii: "Having been driven to engage in a war against a common enemy, what we mutually must most carefully guard against is not to be taken advantage of by the enemy's estrangement policy. In order to estrange American-Japanese relations there are the immigration question and the Chinese question, but there is no timely interest in the former, and, I believe that malicious measures will be taken principally with reference to the Chinese question."

Lansing: "I entirely agree with you. I have already heard, from propaganda reaching my ears, that, while the European powers are engaged in a life-and-death struggle, Japan is taking a free hand in the Far East and is especially establishing an unsurpassably superior position in China. Some maintain that, left alone, the territorial integrity and the principle of the open door and equal opportunity will become mere paper doctrines. Consequently, I believe that if we conclude and announce a sort of joint declaration between the United States and Japan to respect China's territorial integrity and the principle of the open door and equal opportunity in China, it will not only be useful in preventing the enemy's evil propaganda, but also become a guide for the American and Japanese people. What is your opinion?"

Ishii: "Your opinion is a thoughtful one, but I believe that it is not enough to meet the current situation. As is well known, there already exists between the United States and Japan the Root-Takahira agreement of 1908 in which China's territorial integrity and the principle of the open door and equal opportunity are especially noted, while previously Japan

undertook to uphold the same position in the Anglo-Japanese alliance, also touching upon it in both the Russo-Japanese and Franco-Japanese treaties. It is meaningless to the Japanese people, therefore, to take up with your country anew the same matters and to declare them. Supposing that we carelessly repeat only those matters today, the Japanese public will conclude that your country suspected Japan's ambitions and forced her to write a note of guarantee, but our Government must avoid causing the general public to entertain such misunderstanding. Moreover, I cannot believe that the American-Japanese joint declaration under your proposal is timely, and, in order to make the proposed declaration of utility, we must include new matters of different scope together with the above principles. From our point of view, Japan possesses interests superior (*yuyetsu*) to other powers in China as a whole (*Shina zentai*), especially in the contiguous regions, much as the position of your country in the Western Hemisphere, especially in Mexico and Central American countries. Such a circumstance is the actual condition resulting from providential topography (*tenbu no chisei*) and, although the effectiveness of the above condition does not require the recognition of other powers, yet there are occasions when such recognition is advantageous. This is the reason why our country's special interests (*tokushu riyeki*) in China had been voiced first in the Anglo-Japanese treaty and then in the Franco-Japanese and Russo-Japanese treaties. Consequently, if we announce a declaration which embraces the pronouncement on the above stated Sino-Japanese relations along with the restatement, according to your proposal, of China's territorial integrity and the principle of the open door and equal opportunity, it will first of all exterminate, as you believe, the evil effect of propaganda and, secondly, prevent misunderstanding among our own people, and, at the same time, it will also be effective in clarifying the existing conditions in the Far East."

Lansing: "The conversation unexpectedly has come to possess a serious bearing. We shall both give careful consideration to the matter and meet again before long."

* * * *

(Here Viscount Ishii notes that, the very first day's conversation with Secretary Lansing "penetrated to the vital point" and that Mr. Lansing "appeared astonished at my procedure". Ishii felt that Lansing "was not favorably inclined", but that he had "a streak of hope" derived from his initial conversation with President Wilson. Lansing was to confer with the President.)

Instructions from Tokyo had not yet arrived with respect to Viscount Ishii's proposal to abolish "spheres of influence" in China, and the date for his reception by the mayor of New York was fast approaching. He had to leave Washington, deferring the conferences with Secretary Lansing until his return. The New York visit offered several opportunities for him to explain Japan's policy toward China. "In utilizing those favorable opportunities, I presented reasons why the principle of the open door and equal opportunity is advantageous to the Sino-Japanese trade and consequently why our country desired the unreserved application of that principle all over China, and frankly discussed the possible existence of an idea resembling the Monroe Doctrine, not only in the Western Hemisphere, but also in the East." He was received favorably by his audiences. The content of those speeches reached the ears of Wilson and Lansing "and there are some indications that the suspicion which the President entertained as to Japan's violation of the principle of the open door and equal opportunity began to melt away slowly as he recollected the conversation with me." His mission was half-attained if this suspicion had been dispelled. In the United States, public opinion molded state policy, and hence it was neces-

sary for a foreign diplomat occasionally, while negotiating at Washington officially, to talk directly to the people. This was why Ishii emphasized the idea of China's territorial integrity and the open door, and "further tried in a roundabout way to present the inference of what may be called an Asiatic Monroe Doctrine (*Asia Monroe-shugi*). Such a matter as the Asiatic Monroe Doctrine is decidedly delicate and it was not without the possibility of causing misunderstanding among the American people, but the wholehearted welcome which the American officials and people had accorded to our party supplied the courage for me to dare to discuss such a delicate point." The press commented favorably on his contention, and it appeared that public opinion had taken a turn in his favor, thus facilitating recognition of his contention in Washington.

On returning to Washington the attitude of President Wilson was more friendly. He complimented the viscount on his speeches in New York. Lansing also differed "from his previous evasive attitude". He declared that he had come upon an idea as a result of studying Viscount Ishii's proposal. "He then asked me what phrase I proposed for the text of an agreement to describe my statement of the first day of our conversations that Japan possesses interests superior (*takuyetsu*) to other powers in China as a whole (*Shina zentai*), especially in the regions which are contiguous. When I replied that 'paramount interest' best described Japan's interests in China, he immediately declared that the phrase had an extremely strong meaning, that, once recognizing that Japan had such interests, the country which recognized it must blindly follow Japan's activities of whatever description in China, and that the United States Government could not possibly recognize such a phrase. In reply, I stated that I did not believe that there was such a strong meaning in the phrase 'paramount interests', that it had been first used years ago by Secretary of State Seward, and that, as I recalled,

Mr. Freylinghuysen used it in describing the interests of his country in Mexico. After explaining that I purposely used his country's language because our country's interests in China are not different from those of his country in Mexico, I added that, even if his country possessed 'paramount interests' in Mexico, it was unthinkable that the principle of the open door in Mexico's foreign relations was violated, and reminded him of the fact that the foreign trade of other powers in Mexico was actually carried on harmoniously under the most-favored-nation treaties. The Secretary of State made no reply to this, but restated the impossibility of recognizing this phrase as the President also had strong objection to it. Thereupon I stated that, as I was not insistent upon the phrase 'paramount interest', I had no objection to accepting any other appropriate phrase. After repeated negotiations, I suggested anew to substitute 'special interests and influence' for 'paramount interest' but the other party still found some difficulty and finally we arrived at a compromise, adopting 'special interests' by dropping 'and influence'. (Ishii here explains that, although the term 'paramount interest' was of American origin, it was understandable why the United States suspected dangers in the phrase, especially as the second Anglo-Japanese alliance (1905) contained an article which recognized that Japan had "paramount political, military and economic interests in Korea" and later Japan annexed Korea. The phrase "special interests" had been used in the first Anglo-Japanese alliance (1902) and consequently there was no reason for Japan to oppose its use again.

"The difficulty of the text of the American-Japanese joint declaration was, as above described, in the selection of a phrase to describe Japan's interests in China, and the negotiation after the elimination of that difficulty progressed rapidly without interruption." (Here follows the official text of the Lansing-Ishii agreement of November 2, 1917. "Special interests" is here rendered in Japanese by "tokushu riyeki".)

(3) *Obstacles to the Negotiations.* "Mr. Lansing was a pro-Chinese. His family relationship made him so and it could not have been helped. He is [was] the son-in-law of Mr. Foster, former Secretary of State and later adviser to the Chinese Government, and a man who, helping his father-in-law, took trouble to defend China." (Viscount Ishii here recalls the occasion in 1893 when he first met Lansing in Paris, during the controversy over the Bering Sea fishery question. Ishii was at that time secretary of legation in Paris. Lansing had accompanied Mr. Foster who was the American representative in the arbitration proceedings. Lansing and Ishii had not met in the interval.) This situation made Ishii conscious of a "wide gap" between them. They often had "heated arguments", and, at times, it looked as if no satisfactory agreement would eventuate. "But whenever I met him at the next meeting after he had reported the day's conversation to the President, it was not unusual to find him miraculously softened and concessive." Wilson apparently sought to weigh the relative merits of their contentions and did not hesitate to instruct Lansing to accept Ishii's contentions when he thought them sound. "If it had not been for the President there is no room to doubt that the negotiations would have early terminated in disagreement." . . . . Ishii felt that a definite object had been achieved in obtaining Lansing's admission that a mutual guarantee of the territorial integrity of China should be accompanied by a recognition of Japan's special interests.

"Another difficulty was the abolition of spheres of influence in China already touched upon. If Japan expressed the intention of agreeing to this question, there was a likelihood that the other point would be more conveniently settled. But our Government, together with a group of older members of the Foreign Relations Commission, was hesitating and undecided, was unable to find reasons to answer in the negative my request for instructions on the abolition of spheres of influ-

ence, and yet days passed by without their being able to arrive at a decision to consent thereto. I was thus forced to avoid extended discussion of the subject by stating that our Government was hesitant in sending instructions to me as the subject commonly concerned all powers and there was no reason why the United States and Japan alone should now declare their abolition. I declared, however, that I believed that our Government did not perforce object to the abolition of spheres of influence. But suspicion of the United States Government arose on the point that our Government did not agree to the abolition of spheres of influence and I very much regretted that that suspicion appeared in the form of opposition to our contention for superior (*takuyetsu*) interests."

"Yet today, ten years after, where are the spheres of influence which in 1917 our Government authorities and the members of the Foreign Relations Commission, which regarded them as important, could not decide to continue or to abolish? Why is it that not one intelligent person anywhere today discusses spheres of influence? Needless to state, spheres of influence are the products of ambitious politics and the remaining vestiges of aggressive diplomacy. They have been buried as inconsistent with the times. When I suggested their abolition at Washington, they could still have been used at their face value, but today they have become useless objects, like torn shoes and no one looks back upon them."

(4) *Secretary Lansing's Explanation of Japan's Special Interests.* (Viscount Ishii here, in a lengthy section, expresses surprise at Secretary Lansing's testimony before the Senate Foreign Relations Committee on August 11, 1919. His argument here is extremely difficult to follow, being at times inconsistent with other statements made in this same section. It resembles, but is more obviously confused, Secretary Lansing's own irreconcilable statements in reply to the senatorial inquisition as to whether "special interests" meant political interests as well as economic.) Ishii quotes Lansing's testimony to

the effect that Japan's special interests in China were mutually understood to be "not political in nature, and the danger of a statement of special interest was that it might be so construed, and therefore I objected to making such a statement".[1]

"What a surprising explanation!" Ishii felt that it must have been made under pressure of the inquisition which the Senate Foreign Relations Committee, packed with Republican members who asked "mocking questions" of Mr. Lansing, imposed upon him. He felt that Lansing's testimony was, therefore, partly a defense of the former Democratic administration which here was under criticism because of the Republican accusation that Lansing had been inveigled into admitting a definition of Japan's "special interests" which the Republicans asserted was overly favorable to Japan.

Ishii points out that the phrase "special interests" was not originated in the Lansing-Ishii agreement, but in the Anglo-Japanese alliance. To define that phrase one must go back to the Anglo-Japanese treaty of alliance and therein it is clear "that the special interest which both Japan and Great Britain possess in China are: first, the maintenance of China's independence and territorial integrity, and second, the maintenance of equal opportunities in commerce and industry of various powers. In other words Japan's special interests in China are first, China's independence and territorial integrity, and, second, equal opportunities in commerce and industry. Because the meaning of special interests is generally understood to be limited chiefly to political matters, in the American-Japanese joint declaration a section was devoted to special interests and another was specially included for the principle of the open door and equal opportunity. That is to say, Mr. Lansing himself had understood special

[1] *U. S. Senate Documents, Treaty of Peace with Germany* (Hearings, Senate Committee on Foreign Relations), 66th Cong., 1st Sess., Vol. 10, 1919, p. 223.

interests to mean principally political matters and separately included a section relating to commerce and industry." . . . . (Here follows irrelevant comment on the character and scope of commercial interests in China.)

Special interests, then, in Viscount Ishii's view refer to things political—from Japan's point of view, being in part the product of the necessity of fighting a war against Russia in order "to drive strong Russia out of Manchuria". The fact of the existence of a long boundary between Japanese territory in Korea and Manchuria is evidence of these interests. This results in an "intimate" relation between China and Japan.

(Here, following, Viscount Ishii quotes from his diary, a lengthy entry made while he was vacationing at Ikao in September, 1919, at the time of the discussion in Japan of Secretary Lansing's testimony before the Committee on Foreign Relations of the United States Senate.)

"Laying aside outsider's opinions on the so-called 'special interests' of Japan in China, as used in the American-Japanese joint declaration, inasmuch as Mr. Lansing, one of the signatories, has announced such an interpretation in the United States Senate, I, as the other signatory, must also record my interpretation and provide for clarification of a possible embarrassment. In order to understand the true meaning of the American-Japanese joint declaration, commonly known as the Lansing-Ishii agreement, one must go back to the beginning of the negotiation. . . . . It is true that I first suggested 'paramount interest' and then 'special interests and influence', but I merely selected a phrase which expressed the meaning of my first suggestion 'paramount interest' to the fullest extent, and it is but a groundless imagining to interpret from this that I intended to infer political significance only with the addition of 'and influence' as 'special interests' lacks political meaning. What the United States recognized as Japan's special interests in China were

principally political and merely bears an indirect relationship to economic, commercial and industrial matters. Otherwise, the American-Japanese joint declaration becomes meaningless. If these special interests are economic and non-political as Secretary Lansing has replied in the Senate, it becomes unharmonizable with the principle of the open door and equal opportunity which constitutes the other half of the declaration."

"What does it mean to say that Japan possesses economic special interests in China under the principle of the open door and equal opportunity? Even in Manchuria after the Russo-Japanese war, did not Japan repeatedly declare that she will not interfere with commerce and industry? Was not Japan's repetition of such declarations due to the fact that she previously agreed to the proposal of the United States Government and recognized the principle of the open door and equal opportunity? If Japan possessed economic special interests in China, would not that rather become the beginning of closed doors and unequal opportunities? Moreover, it is not uncommon that the relationship between contiguous frontier and commerce and industry is surprisingly weak." (Here he defends the argument that trade relations are not made the more intimate or profitable merely by virtue of territorial contiguity or proximity.)

(5) *The Fundamental Character of Japan's Special Interests in China.* (This is apparently a continuation of the entry in his diary made at Ikao in September, 1919.) "If, then, I am asked what is the nature of what I call 'special interests' and why Japan possesses such interests in China, I reply as follows, with a slight addition to what I had personally presented before Mr. Lansing in the course of the negotiations for the American-Japanese joint declaration:

"(1) Whenever an occasion arises when there is a danger to the lives and property of natives and foreigners as a result

of natural catastrophes; or (2) whenever the lives of natives and foreigners are in peril as a result of the prevalence of epidemics in China; or (3) when there arises in China a civil war which continues without interruption; or, finally, (4) when an occasion is evident when China is overflooded with dangerous thoughts (*kiken shiso*) and there is a danger of its spreading abroad . . . . , under such circumstances it cannot be expected that the Japanese Government can be satisfied with such simple procedure as giving up their properties and fleeing from the country. When natural catastrophes in China destroy the very soil, when epidemics prevail over China and the roads are filled with victims, when China is absorbed in a semi-permanent civil war, or when China becomes the nest of Bolshevism, while European and American countries need not fear therefrom direct danger to the existence of their countries, Japan alone can not exist without China and the Japanese people can not develop without the Chinese people. Civil disturbances arising in China or epidemics and heresies prevalent in China will readily pass over to Japan and will not stop until they afflict and victimize Japan along with China. This is the foundation of the special interests which Japan possesses in China. It is what I call the inseparable mutual intimacy of relationship between the two countries. This is the providential relationship resulting from the so-called geographical conditions and it is an irremovable fact from which Japan can not escape no matter how she tries. This is a circumstance which neither Europe nor America can possibly attempt to rob from us or to alter." . . . . "More intimate and more material are Japan's interests *vis-à-vis* China than those of Europe and America, and, consequently, Japan's responsibilities must be the greater, and her right to express herself (*hatsugen no ken*) the more obvious. These are Japan's special interests in China."

"Only by such political interpretation does the meaning of Japan's special interests in China become significant, and also

only through similar interpretation does the Lansing-Ishii Agreement justify its existence." (Ishii contends that the agreement first undertakes to recognize Japan's special interests, and then states that " nevertheless " the territorial integrity of China remains unimpaired. The first is primary, an exception to the general principle which follows. " For the above reasons, I do not hesitate to assert positively that Japan's special interests in China are chiefly political and rather indirectly relate to economic and commercio-industrial relations." (Here ends the quotation from Ishii's diary.) . . . .

(Viscount Ishii then presents his views of " special interests " as of the time he published his memoirs, 1930.) . . . . " As I peruse recent discussions, it appears that not a few of the articles in our newspapers and magazines make such material objects as the Kwantung leased territory, the South Manchuria Railway, and the Fushun coal mines the objectives of our special interests. This is certainly a misunderstanding. The South Manchuria Railway and the Fushun mines are the things which constitute the background of our special interests but not the special interests themselves. The Japanese rendering of the English term ' special interests ' is ' tokushuriyeki ', and the ' interests ' here referred to do not mean material interests which can be seen or felt. In this case it means ' special concern with regard to advantage or disadvantage to national interests ' [*rigai-kankei* i. e., *li-hai kuan-hsi*, in Chinese]. No misunderstanding arises in English as to this latter expression because it is not unusual to use ' interest ' to mean ' *rigaikankei* ', but in Japan there is a slight unreasonableness in trying to produce the meaning of ' *rigai-kankei* ' through the simple use of ' *riyeki* '—which means ' interest '. This, it appears to me, is the reason why we have become the victim of misunderstanding at times when we have tried to define our special interests in China. In other words, one probably may arrive gradually at a point where he believes that our

special interests are entirely included within the expression 'riyeki', and by enumerating the South Manchuria Railway, the Fushun mines, and other things, to indicate material objects, non-political but economic, as Secretary Lansing maintained. Mr. Lansing's misunderstanding did not come from the phrase itself; his interpretation comes very close to being a distorted one (*kyokkai*). The misunderstanding of the controversialists in Japan undoubtedly, however, resulted from the expression. I recall that, when I returned to Japan late in November, after signing the American-Japanese joint declaration, my home was being guarded by the police." (This, he explains, was due to the disturbances of Chinese students who understood that Japan had obtained approval in the United States for infringing on China's sovereign rights. This, he says, was a misunderstanding, based on "unnecessary emphasis upon the word 'riyeki'—meaning interests." He explains that the use in Japan of the expression "*rigaikankei*" [special concern] should not have been misunderstood by the Chinese, as it meant merely an "inseparable intimate relationship" between the two countries.) . . . .

Section 3. Abolition of the American-Japanese Joint Declaration and Our Special Interests. "Late in April, 1923, when I visited the Minister for Foreign Affairs in the Gaimusho prior to returning to my post in Paris, an unexpected piece of news was disclosed to me. It was the fact that the United States had recently declared its strong desire to terminate the Lansing-Ishii agreement, and that our Government had consented thereto. I was in Japan at the time, but I knew nothing about it during the negotiations to abolish the agreement, and I learned it only after its abolition." . . . .

"The negotiation for the abolition of the American-Japanese joint declaration is exceedingly mysterious. People are apt to suppose that the American-Japanese agreement was abolished at the Washington Conference, but that is a mistake. The fact is that it was on April 14, 1923, almost one year

after that Conference, that it was terminated." (Quotes the text of the exchange of notes declaring its termination.)

Viscount Ishii then concludes that the technical termination of the Lansing-Ishii agreement did not abolish the declarations of axiomatic facts contained therein. "Japan's special interests in China merely described the actual conditions resulting from natural geography and those interests were not the gifts of the United States. Mr. Lansing and I merely filled, so to speak, the rôles of photographers. Even if we destroy the positive print, because the finished photograph does not suit the taste of present-day Americans, the negative still remains. If we destroy even the negative, what can we do when the material object still remains? I repeat that Japan's special interests in China from the beginning did not necessitate the recognition of other countries. But an unnecessary recognition is at times advantageous. The recognition of our special interests by the United States belongs precisely to that category. It is foolish to count the years of a dead child, but the special interests which Japan possesses in China are not dead children. Even if the Lansing-Ishii agreement is abolished, Japan's special interests unshakenly exist there. The special interests which Japan possesses in China neither were created by an international agreement, nor can they become the objects of abolition."

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INDEX

Addis, Sir Charles, cited, 220, 270, 287
Aigun, treaty of (1858), 9
Alston, B., 283
Alvarez, A., on the Monroe Doctrine, 342
Anderson, Chandler P., cited, 321
Anglo-Japanese treaties of alliance (Jan. 30, 1902; Aug. 12, 1905), 91, 107, 118
Anglo-Russian exchange of notes (1899), 119-120
Anshan iron mines, and Japan's treaty rights in Manchuria, 367
Arbuthnot, Mr., M. P., and the Chinchow-Aigun project, 154-156
Asakawa, K., cited, 105; on the 1907 reforms in Manchuria, 15
"Asia Monroe Doctrine," 213, 224; and Manchuria, 327-345; W. W. Willoughby on, 330; historical development of, 331 ff.; J. W. Jenks on, 332; Shailer Mathews on, 333-334; Viscount Ishii and, 334 ff.; Secretary Lansing and, 337-339; since the Washington conference, 340-341; and the American Monroe Doctrine, 341 ff.

Balfour, A., 290
Banque de l'Indo-Chine, 172, 282
Barnes, J. S., cited, 308, 312
Bau, M. J., cited, 41, 339
Beresford, Lord Charles, cited, 42, 68, 87
Blakeslee, Geo. H., cited, 14, 344
Bland, J. O. P., cited, 108, 109, 123
Borchard, E. M., cited, 365
Brandegee, Senator, 225
British and Chinese Corporation, Ltd., 52, 59, 89, 107
Brown, P. M., cited, 345
Brunnert, H. S., and Hagelstrom, V. V., cited, 12, 14
Bryan, W. J., 196, 197, 198
Buell, R. L., cited, 226, 288, 291, 339
Bülow, Count von, 64

Calhoun, Minister, 179
Cameron, Ewen, 59
Chang, General Hsün, 201
Chang, Hsueh-liang, 20, 21, 24, 251, 361, 363
Chang, Tso-hsiang, 25
Chang, Tso-lin, 16, 18, 19, 20, 21, 26, 236, 250, 262, 347, 348, 360-361
Chao, Erh-hsün, Viceroy of Manchuria, 16, 18, 19
Chase National Bank (N. Y.), 282
Chengchiatun incident (1916), 199
Chicherin, 85
China, Manchuria as an integral part of, 1 ff.; Manchuria never considered a dependency of, 12; and the Russo-Chinese secret agreement (June 1, 1899), 61-62, 63
Chinchow-Aigun Railway, 62, 70, 77; preliminary agreement pertaining to construction of, 127 ff.; principal provisions of contract for construction of, 127-128; project, and the "Knox plan," 129 ff.; Sir Edward Grey's attitude toward, project, 135-136; Russian opposition to, 142 ff.; Japanese rejection of, 148 ff.; Mr. Ijuin's warning to China as to, 151; attitude of British Foreign Office toward, 152 ff.; criticism in House of Commons of the Foreign Office policy anent, 153 ff.; appraisal of Russian attitude

toward, 163-165; appraisal of Japanese attitude toward, 165 ff.
Chinda, Viscount, 196
Chinese Eastern Railway, 20, 47, 48, 49; Russo-Japanese war ends Russian control over southern branch of, 68, 77
Chinese Government, relation of Manchuria to the, 8 ff.; memorial to the throne (1875) urging more direct control of the Three Eastern Provinces by, 10-11
Ching dynasty, 9
Ch'ing, Prince, 77, 143, 150
Chosen, Bank of, and the Nishihara loans, 239 ff.; loan to the Fêngtien provincial government (April 22, 1918), 246, 258-260; and Japan's treaty rights in Manchuria, 367
Chün, Prince, 131, 132
Clyde, P. H., cited, 97, 104, 160, 294
Cobbett, Pitt, definition of sphere of influence, 38
Coleman, Frederic, cited, 334
Continental and Commercial Trust and Savings Bank (Chicago), 282
Convention, Russo-Japanese (1907), 73 ff., 125; Russo-Japanese (July 4, 1910), 167
Coons, A. G., 254-255
Crane, Charles R., 124, 283
"Crane Incident," 124, 257
Croly, Herbert, cited, 14, 107, 108, 109, 123, 126, 128, 129, 131, 132, 146, 170, 171, 180

Dennis, A. L. P., cited, 74, 75, 80, 81
Deutsch-Asiatische Bank, 172
Donaldson, John, on the distinction between spheres of influence and spheres of interest, 45; cited, 321, 325

Escarra, Jean, cited, 6
Evacuation Convention (April 8, 1902), 63
Exchange Bank of China, vide Sino-Japanese Exchange Bank

Fascism, and Japan's "Right to Live Doctrine," 307-309. 312
Feng, Kuo-chêng, 262
Fenwick, C. G., cited, 29, 318, 340, 341-342
Ferguson, Dr. John C., 233, 234
ffrench, Lord, representative of Pauling and Company, 128
First National Bank, 128, 173
"Five Manchurian and Mongolian Railways Agreement," 240
Fleisher, Wilfred, 197
Fletcher, *chargé d'affaires*, 150, 165
"Four Manchurian and Mongolian Railways Agreement" (Sept. 28, 1918), 246, 251-254
"Four Northeastern Provinces," 20
Four-Power Consortium, formation of, 171-172; the Manchurian loan and general currency reform in China, 172; Japanese attitude toward, 174 ff.
Franco-Japanese agreement (June 10, 1907), 73, 125
Freylinghuysen, Mr., 213
Fushun collieries, and Japan's treaty rights in Manchuria, 367

Gary, Elbert H., 334
Giers, M. de, 61
Goto, Viscount, 69, 84
Goto Mission to Moscow (1927), 85-86
Grey, Sir Edward, 76, 101, 120; attitude toward Chinchow-Aigun Railway project, 135-136; reply to Knox proposal, 135, 138
Guaranty Trust Company of New York, 282

Hagelstrom, V. V., and Brunnert, H. S., cited, 12, 14
Hague Court of Arbitration, 122
Hall, J. P., cited, 317

Hall, W. E., definition of sphere of influence, 39
Hamaguchi Ministry, and the change of Japanese policy toward Manchuria, 365 ff.
Hanihara, Masanao, 304
Hara, Premier, 267; statement of Japan's "Right to Live Doctrine," 306 ff.
Harcourt, Sir William, 42
Harding, Warren G., the Lansing-Ishii Agreement and the "open door" policy, 218-219
Harriman, E. H., and the "Knox plan," 130-131; requested by Chinese Government to undertake a Manchurian loan, 169-171
Harris, N. D., cited, 29, 37
Harrison, E. J., cited, 114-115, 121
Hart, Sir Robert, 55
Hay, John, American Secretary of State, 36, 45; exchanges of notes (1899) initiated by, recognizing Russian sphere of interest in Manchuria, 65-67; Japanese attitude toward notes (1899) of, 87-88
Hayashi, Baron Gonsuke, 21, 361
Hayashi, Kyujiro, 21, 233, 245
Herrick, Ambassador, 180
Hishida, S. G., cited, 97
Hodges, H. G., cited, 365
Hoike, Japanese Minister in Peking, 184
Holmes, Mr. Justice, 51
Hongkong and Shanghai Banking Corporation, 52, 53, 59, 171, 172, 282
Hornbeck, S. K., cited, 119; gives reasons for failure of the "Knox plan," 162; on the Chinchow-Aigun Railway project, 167; on reason for admission of Japan and Russia to the Four-Power Consortium, 176; cited, 179, 182, 192, 330
Hosie, A., cited, 9, 120
Howland, Charles P., cited, 364, 365
Hsi Liang, Viceroy of Manchuria, 15-16
Hsia, Ching-lin, cited, 5
Hsieh, Pao-chao, cited, 11, 12
Hsinmintun-Fakumen Railway, 63, 70, 101, 104, 106; defeat of the British project pertaining to, 107-123; Japanese bases of right to veto Sino-British contract anent, 109 ff., 115 ff.; a "parallel" to the South Manchuria Railway, 110 ff.
Hsü, Shih-chang, and reform of the Manchurian provincial administration, 12 ff.; and the British Hsinmintun-Fakumen Railway project, 108
Hsü, Shu-hsi, cited, 9, 108, 111
Hughes, Charles Evans, 293, 294, 342, 345, 364-365
Hyde, C. C., cited, 364, 365

Ichihashi, Y., cited, 288, 291
Ijuin, Japanese Minister at Peking, 150-151, 165
Industrial Bank of Japan, 243, 244, 252
"Inner Mongolia," and the Russo-Japanese treaty of 1912, 79-81
International Banking Consortium (1918-1920), negotiations relating to Manchuria, 261-288; Japanese "special rights and interests" in Manchuria and, 266 ff.; and the claims of the Japanese Government to a sphere of interest in Manchuria, 273 ff.; negotiations and the outcome anent Japan's claims in Manchuria, 281 ff.; and the Nine-Power Pact, 289
Intervention, Japanese, in Manchuria, 345-367; and the Kuo mutiny, 347 ff.; and the South Manchuria Railway, 349 ff.; and the Shantung expedition (1928), 355 ff.; and the "positive policy" of the Seiyukai Ministry, 356 ff.; and the establishment of the Hamaguchi ministry (1929), 365 ff.

Ishii, Viscount Kikujiro, and the Lansing-Ishii Agreement, 193 ff.; and the "Asia Monroe Doctrine," 334 ff.; interpretation of "Special Interests," 372-391
Ishii Mission, purpose of, 196-198; underlying factors anent, 198 ff.; and the "open door" policy, 209-211; Viscount Ishii's account of negotiations anent Lansing-Ishii agreement, 211-214
Isvolsky, Alexander, Russian foreign minister, cited, 70; on the Russo-Japanese secret treaty (1910), 75-76; replaced by Sazonoff, 79; attitude toward "Knox plan" and the Chinchow-Aigun project, 140
Ito, Marquis, 130

Jardine, Matheson and Company, 52
Jehol, one of the "Four Northeastern Provinces," 20
Jenks, J. W., on the "Asia Monroe Doctrine," 332
Joffe, Soviet envoy to China and Japan, 84

Kahn, Otto, 131
Kajiwara, Mr., of the Yokohama Specie Bank, 267, 285, 286, 287
Kakiuchi, T., 254
Kalgan-Urga-Kiakhta Railway, 151
Kato, T., Japanese Foreign Minister, 98, 99, 184, 293, 305
Kawakami, K. K., cited, 97, 162, 197, 230, 232, 358
Kent, P. H., cited, 54, 56, 89
Kinder, Mr., 54
Kirin-Changchun Railway, 186, 188; transfer of operation of, to South Manchuria Railway Company, 241-242
Kirin-Huining Railway Loan agreement (June 18, 1918), 246, 247-251
Knox, Philander C., "neutralization" plan of, 106, 125 ff.; and the Four-Power Consortium, 174, 176, 180
"Knox Neutralization Plan," 125-168; and the Chinchow-Aigun Railway project, 129 ff.; and the Straight-Harriman proposals, 130-131; and the Schiff proposals, 132-133; presented to Great Britain, 133; outline of, 134-135; Sir Edward Grey's reply to, 135; Japanese support of, solicited, 136; accepted by the German Government, 136; French hesitation as to, 136-137; procedure of United States Department of State as to, criticized, 137 ff.; a new form of the "open door" policy, 139; reasons for Russian opposition to, 140-142; American reply to Russian rejection of, 144-145; Japanese rejection of, 147 ff.; attitude of British Foreign Office toward, 152 ff.; appraisal of the problem of national rights involved, 157 ff; treaty of Portsmouth and the Japanese rejection of, 159 ff.
Komura, Baron, 76, 93, 94, 98, 100, 103, 106, 130, 131, 147, 331
Komura-Yuan agreements, vide Sino-Japanese treaty (Dec. 22, 1905)
Koo, V. K. Wellington, 290, 292, 304
Korea, cited as possible indicator of Manchuria's future, 30-31
Korostovetz, Mr., 137, 143, 151
Koudacheff, Prince N., 176
Krausse, A., cited, 10
Kuhara, F., 85
Kuhn, Loeb and Co., 128, 132, 170, 173, 282
Kuo, Sung-lin, mutiny of, and Japanese intervention in Manchuria, 347 ff.
Kurachi, Japanese vice-minister for foreign affairs, 80
Kwang Hsü, Emperor, 131

Kwantung leased territory, Russo-Japanese war ends Russian hegemony over, 68; and Japanese treaty rights, 367

Laloy, Emile, cited, 75
Lamont, Thomas W., and the International Banking Consortium, 267, 269, 272-273, 280, 284, 285, 286, 287
Lansing, Robert, 36-37; and the Lansing-Ishii Agreement, 193 ff.; expresses attitude of State Department toward Japan's claim to "special interests" in Manchuria, 207-208; testimony anent Lansing-Ishii negotiations, 214; and the International Banking Consortium, 262 ff.; and the "Asia Monroe Doctrine," 337-339
Lansing-Ishii Agreement (1917), conflicting interpretations of, 193-195; no published official record of the conversations anent, 194-195; Viscount Ishii's account of negotiations, 211-214; quoted in full, 214-215; reasons for its international legal significance, 216 ff.; an "executive agreement," 217; definition of terminology in negotiations, 217 ff.; and "spheres of influence," 217-219; and the "open door" policy, 217-219; and "Propaganda" as to Japan's activities in China, 220 ff.; and Japan's claims to "paramount interests" in China, 223-225; and "special interests and influence," 225 ff.; and the translation of the term "special interests" into Chinese and Japanese, 233 ff.; terminated, 296
Lawrence, T. J., on distinction between real and colonial protectorate, 28; definition of sphere of influence, 38
Lawton, Lancelot, cited, 77, 102, 107, 109, 111, 113, 114, 116, 117, 121, 122, 137, 138, 139, 143, 144, 151, 152, 155, 157, 158-159, 166
Lee, Higginson and Co., 282
Leith, C. K., cited, 326
Lessar, M., Russian *Chargé d'Affaires* at London, 57
Li, Ching-lin, 353
Li-Lobanoff treaty of alliance, 50
Li, Yuan-hung, 201.
Liang, Shih-yi, 245
Liaotung territory, leased to Russia (1898), 50
Lu, Chung-yu, president of the Sino-Japanese Exchange Bank, 245, 249
Lugard, Sir Frederick, cited, 37

MacMurray, J. V. A., cited, 48 passim
Manchuria, an integral part of China, 1 ff.; significance of the term, 2; official Japanese attitude as to position of, 5-6; views of Chinese writers as to position of, 6; attitude of foreign powers toward position of, 7; relation of, to central Chinese government, 8 ff.; never considered a dependency of China, 12; administrative reform of (1907), 12 ff.; during the Chinese Revolution, 17; during the post-revolutionary period, 18 ff.; present administrative system of, 24-25; not a protectorate, 26-35; factors underlying impression that Japan has sought to establish a protectorate over, 29 ff.; as a sphere of influence or interest, 35-46; Russian sphere of railway interest (1896-1904) in, 47-69; Russo-Japanese agreements (1905-1906) delimiting their respective spheres of interest in, 69-86; original legal basis of Japan's claims to monopolistic railway rights in, 87-105; Japanese attitude toward British Hsinmintun-Fakumen Railway project, 106-124; and the "Knox Neutralization Plan,"

125 ff.; and the Chinchow-Aigun Railway project, 125 ff.; and the consortium operations (1910-1915), 169 ff.; Japanese claim to special rights and interests in (1910-1915), 174 ff.; and the Sino-Japanese Agreements (1915), 183-192; Japan's claims to special interests in (1916-1918), 193 ff., vide, Lansing-Ishii Agreement; Ssuping-kai-Chêngchiatun Railway project, 240-241; Kirin-Changchun Railway, 241-242; and Japan's "positive financial and economic policy," 1916, anent China, 242-243; and the reorganization of Japanese banks, 242-243; the Nishihara loan contracts anent, 246 ff.; Japan's claims to special interests in 1918-1922), 261 ff.; and the International Banking Consortium negotiations (1918-1920), 261-288; the Washington Conference and Japan's position in, 288-297; Japan's claim to "vital interests" in, 291-292; and the economic basis for Japan's "Right to Live Doctrine," 298 ff.; and the "Asia Monroe Doctrine," 327-345; Japanese intervention in, 345-367; Japanese treaty rights in, 367 ff.; Japan's position in, today, 369 ff.
Manchurian Industrial Development Loan, 172
Marshall, Chief Justice, 317
Martens, F. de, 116
Mathews, Shailer, on the "Asia Monroe Doctrine," 333-334
Matsuoka, Y., 249; statement of Japan's "Right to Live Doctrine," 309-313
Maugras, M., 283
Mayers, W. F., cited, 11, 12
Millard, Thomas F. F., 235
Monroe Doctrine, Asiatic, vide "Asia Monroe Doctrine"
Moore, J. B., cited, 65, 365
Morgan, J. P., and Co., 128, 129, 282
Morris, Roland S., 237, 265
Morrison, Dr., 102, 109, 114, 120, 157
Motono, Viscount, 236
Mukden, relation of, to central Chinese Government, 8-9, 19 ff.; diplomatic relations of, with foreign states, 23
Muravieff, Count, 57

Nakajima, on Manchuria as an integral part of China, 6
Nakamura, Z., 79
National City Bank of New York, 128, 173, 282
Nerchinsk, treaty of (1689), 9
Newchwang, vide Yingkow
Nicholas II, Tsar, 57-58, 79
Nine-Power Pact (Feb. 6, 1922), concessions of Japan, 288 ff.; definition of "open door" doctrine, 294 ff.
Ning, En-chêng, cited, 9
Nishihara, Kamezo, and the "Nishihara Loans," 244 ff.; and the Kirin-Huining Railway loan agreement (June 18, 1918), 246, 247-251; and the "Four Manchurian and Mongolian Railways Agreement" (Sept. 28, 1918), 246, 251-254; and the Bank of Chosen loan to the Fêngtien provincial government (April 22, 1918), 246, 258-260; and the Kirin-Heilungkiang gold mining and forestry agreement (Aug. 2, 1918), 246-247, 254-257
"Nishihara Loans," vide Nishihara, Kamezo

Obata, Y., 283
O'Brien, Ambassador, at Tokyo, 136, 139, 147, 174
Odagiri, M., and the proposed operations of the International Banking Consortium in Manchuria, 269-270, 272
Okuma, Count, 192, 332, 333, 334, 340

Okura and Company, 258
"Open door" policy, and reference to Russian sphere of interest in Manchuria, 65-67; Japanese attitude toward, 87-88; and foreign recognition of Japanese sphere of interest in Manchuria, 92; and the Ishii Mission, 209-211; and the Lansing-Ishii Agreement, 215; and the international Banking Consortium negotiations, 264 ff.; and the Nine-Power Pact, 289, 294 ff.; and the Washington Conference, 293 ff.; Premier Hara's use of term, 313 ff.
Oppenheim, L., definition of the term "protectorate," 28
Orchard, John E., cited, 326
Oriental Development Company, reorganized and authorized to further Japanese colonization in Manchuria and Mongolia, 243
"Outer Mongolia," and the Russo-Japanese treaty of 1912, 79-81
Overlach, T. W., cited, 131, 146, 159, 179

Pauling, George, on British railways in China, 157
Pauling and Company, and the Hsinmintun-Fakumen Railway project, 106, 107 ff.; and the Chinchow-Aigun railway project, 127 ff.
Pavloff, M., 53, 54, 55
Peking, treaty of (1860), opened Yingkow to foreigners, 10
Peking-Mukden Railway, 124, 127, 347
Peking-Newchwang Railway, preliminary loan agreement for (June 7, 1898), 52
Peking - Tientsin - Shanhaikwan Railway, 52
Penhsihu Colliery Company, 258
Pooley, A. M., cited, 81, 103, 107, 117, 121, 157
Portsmouth, treaty of (1905), 7, 47, 48, 68, 70-72, 88, 89, 90, 91, 105, 115 ff.
Protectorate, Manchuria not a, 26-35; Oppenheim on meaning of the term, in international law, 27, 28; Westlake distinguishes between real and colonial, 28; Lawrence on distinction between real and colonial, 28; Africa and the use of the term, 28-29
Putiatin, Count, 10

Quigley, H. S., cited, 21

Railway interest in Manchuria, Russian sphere of (1896-1904), 47-69; British, and Russia, 52-61; British withdrawal of, 58; and the Sino-Russian agreement (June 1, 1899), 61-62, 63; Russo-Japanese agreements (1905-1916) delimiting their spheres of, 69-86; Japanese, and the International Banking Consortium negotiations, 266 ff.
Railway rights, Russian, and the contract agreements of Sept. 8, 1896, and July 6, 1898, anent the Chinese Eastern Railway, 49; Japan's claims to monopolistic, in Manchuria, 87-105; original legal basis of Japan's claims, in Manchuria, 87 ff.; Russian quasi-monopolistic, and the Chinese commitments of May 7, 1898, and June 1, 1899, 89-90
Rapprochement between Russia and Japan after Russo-Japanese war, reasons for, 70; the secret treaties and, 70 ff.
Reid, Ambassador, at the Court of St. James, 133
Reinsch, Dr. Paul S., attitude toward Japanese interests in China, 198 ff.; and the International Banking Consortium, 283

"Right to Live Doctrine," Japan's, economic basis for the assertion of, 298 ff.; statement of the doctrine, 306-316; Premier Hara's statement of, 306 ff.; and Fascism, 307-309; Y. Matsuoka's statement of, 309-313; and "open door" policy, 313 ff.; appraisal of, 316-325
Rockhill, W. W., cited, 97, 103, 140, 146
Root, Elihu, 131, 170, 171
Root-Takahira agreement (Nov. 30, 1908), 7, 125-126, 131, 147, 171
Royama, M., cited, 4-5
Russo-Chinese Bank railway contract (Sept. 8, 1896), 49, 50
Russo-Japanese treaty (secret) of 1907, provisions of, 73-75
Russo-Japanese treaty (secret) of 1910, confirms treaty of 1907, 75; Isvolsky on, 75-76; reasons for, 76-77; provisions of, 78
Russo-Japanese treaty (secret) of 1912, and the spheres of interest of the two countries in "Outer Mongolia" and "Inner Mongolia," 79-81
Russo-Japanese treaty (secret) of 1916, reasons for, 81; appearance of the term "vital interests," 82

Salisbury, Lord, 60
Sazonoff, M., Russian foreign minister, Russo-Japanese treaty of 1912 negotiated by, 79; Russo-Japanese treaty of 1916 negotiated by, 81
Schiff, Jacob H., 131, 132, 138, 146
Schuyler, *chargé d'affaires* at St. Petersburg, 140
Scott, Sir C., 53, 57
Scott, J. B., cited, 317
"Secret protocols," alleged, attached to Sino-Japanese treaty (Dec. 22, 1905), 94 ff.; Japanese basis of right to veto Sino-British contract anent the Hsinmintun-Fakumen Railway, 109, 110 ff.
Seiyukai Ministry, "positive policy" of, as to Manchuria, 356 ff.
Seward, W. H., 213
Shanhaikwan-Hsinmintun-Yingkow Railway, 63
Shibusawa, Baron, 132, 138, 192, 334
Shidehara, Baron, 195, 355, 366
Shirakawa, General Y., states the Japanese position in Manchuria during the Chang-Kuo hostilities, 349, 350
Siebert and Schreiner, cited, 75, 76, 78, 79, 80
Sino-Japanese agreement (Sept. 4, 1909), settled Hsinmintun-Fakumen Railway controversy, 109; other settlements of, 123-124
Sino-Japanese Agreements (1915), 183-192; effect of, 189 ff.
Sino-Japanese Exchange Bank, organization of, 243
Sino-Japanese treaty and Additional Agreements (Dec. 22, 1905), transfer of Russian rights in South Manchuria to Japan ratified by China in, 88; Japanese commercial privileges acquired by, 93-94; and the alledged "secret protocols," 94 ff.
Sino-Russian agreement (June 1, 1899), 61-62, 63
Six-Power Consortium, formation of, 177 ff.; Chinese rejection of, 178-180; withdrawal of American official support of, 180
South Manchuria Railway, and the Kuo mutiny, 349 ff.; and Japan's treaty rights in Manchuria, 367
South Manchuria Railway Company, and the Hsinmintun-Fakumen Railway controversy, 107 ff.; and the Ssupingkai-Chêngchiatun Railway project, 240-241; and the Kirin-Chang-

chun Railway, 241-242; the transfer of the operation of the Kirin-Changchun Railway to, 241-242; and Japanese treaty rights in Manchuria, 367
Soviet Government, claims no sphere of interest in Manchuria, 69; recognized by China, 84
Special rights and interests, Japanese claim to, in Manchuria, and the Four-Power Consortium, 174 ff.; and the Lansing-Ishii Agreement, 193 ff.; attitude of Ambassador Reinsch toward Japan's claim to, in Manchuria, 205; attitude of Secretary Lansing toward Japan's claim to, in Manchuria, 207; of Japan in Manchuria and the International Banking Consortium, 266 ff.; meaning of, to-day, 368 ff.; Viscount Ishii on Japan's, in China, 372-391
Sphere of influence, Manchuria as, 35 ff.; T. J. Lawrence defines, 38; Pitt Cobbett defines, 38; characterized, 38-40; W. E. Hall defines, 39; Oppenheim defines, 39; G. G. Wilson on, 39; Japanese, in Manchuria and the Washington Conference, 290 ff.; meaning of, to-day, 369 ff.
Sphere of interest, Manchuria as, 35 ff.; distinction between sphere of influence and, 38; legitimate claim of Russia to, in Manchuria (1899), 50-51; British recognition of Russian, in Manchuria, 51 ff.; legal foundation of Russian claim to, in Manchuria, 61-62, 63; German recognition of Russian, in Manchuria, 63 ff.; the Hay notes of 1899 and the recognition of a Russian, in Manchuria, 65-67; Russo-Japanese agreements (1905-1916) delimiting their spheres of interest in Manchuria, 69-86; recognition of Japanese, in Manchuria, 92 ff.; and the Sino-Japanese agreements (1915), 183-192; Japanese, in Manchuria and the Nine-Power Pact, 288-289; Japanese, in Manchuria and the Washington Conference, 290 ff; import of, to-day, 368 ff.
Ssupingkai-Chêngchiatun Railway project, 240-241
Stalin, 85
Stevens, F. W., 267
Stowell, E. C., cited, 318, 365
Straight, Willard, 102, 107, 123, 171, 173, 179; and the Chinchow-Aigun Railway project, 128 ff.
Suehiro, Dr., 238
Sun, Dr. Yat-sen, 35, 363

Taft, President, 124, 171
Taiwan, Bank of, 244, 252
Takahashi, Baron, 132, 138
Takayangi, Y., cited, 348
Takekuchi, Mr., 270
Tanaka, General Baron, 34, 355, 356 ff.
T'ang Shao-yi, appointed civil-governor of Fêngtien province, 13; summary of the political career of, 16; and the "secret protocols" of 1905, 102; and the British Hsinmintun-Fakumen Railway project, 108, 109, 122; plan for flotation of a Manchurian loan, 170-171
Taonan-Jehol Railway, 277, 278, 279, 286
Tashihchiao-Yingkow Railway, 123
Tatsumi, K., 287
Terauchi, Count, 199, 239
Terauchi Ministry, 192, 238, 242, 243, 340
Thompson, Warren S., cited, 325-326
Three Eastern Provinces, memorial (1875) urging more direct control of, by central Chinese Government, 10-11; Jehol added to the former, 20

Tokugawa, Prince, 79
Toyokichi Iyenaga, cited, 14
Ts'ao, Ju-lin, and the "Nishihara Loans," 245, 246, 249, 254, 255
Tsitsihar-Koshan Railway, 163
Tsungli Yamen, 53, 54, 55, 62, 89
Tsurumi, Y., cited, 344
Tuan, Ch'i-jui, and the "Nishihara Loans," 245, 249, 252, 255
"Twenty-one Demands," 184 ff.; purpose of, 184; the original demands, 185-186; summary of rights acquired by means of, 188-189
Tyau, M. T. Z., cited, 39, 40, 41

Uchida, Count, 366
Uyeda, K., 79

"Vital Interests," and Russo-Japanese treaty of 1916, 82; Japanese claim of, in Manchuria at Washington conference, 291-292
Voltaire, cited, 4

Wakatsuki Ministry, 355, 359, 360, 366
Walton, Sir Joseph, and the Chinchow-Aigun project, 156
Wan, Fu-lin, 25
Wang, Ch'ung-hui, 291
Washington Conference, 7, 36, 43, 44, 46, 74, 93, 95; and Japan's position in Manchuria, 288-297
Washington Nine Power treaty (1922), 34, 43
Weale, Putnam (Lennox-Simpson), cited, 99, 249
Westlake, John, distinguishes between real and colonial protectorates, 28; cited, 37, 40-41, 319-320
Wheeler, *Chargé d'Affaires* at Tokyo, 201
Wilenkin, Gregory, 132
Williams, E. T., 203
Williams, Jesse Lynch, cited, 285
Willoughby, W. W., cited, 7, 36, 38, 41, 43, 90, 100, 126, 130, 143, 151, 173, 195, 288 290 293,, 300, 302, 304, 308, 316, 321, 322, 323, 330, 338
Wilson, G. G., cited, 29; on concept of spheres of influence, 39
Wilson, Huntington, 98, 99, 100
Wilson, Woodrow, and the withdrawal of American official support of the Six-Power consortium, 180-181; advice to China as to factional disputes (June 4, 1917), 200; and the "open door" policy in China, 209
Wright, Quincy, cited, 5
Wu, C. C., cited, 34, 362

Yang, Yü-t'ing, 357
Yao, Emperor, 9
Yentai coal mines, 123
Yingkow, opened to foreigners by treaty of Peking (1860), 10
Yokahama Specie Bank, and the final loan contract for the Ssupingkai-Chêngchiatun railway, 240; reorganized (1916), 242-243; and the "Nishihara Loans," 244-245; and Japan's treaty rights in Manchuria, 367
Yoshizawa, Japanese Minister at Peking, 353, 357
Young, A. Morgan, 267, 285, 346
Young C. Walter, reference to writings by, 7, 14, 21, 43, 49, 50, 66, 69, 73, 78, 84, 153, 167, 184, 186, 240, 242, 247, 251, 258, 271, 289, 346, 347, 352, 358, 362
Young, Robert, 99
Yuan Shih-k'ai, 18, 79, 94, 98, 103, 131
Yukio, Ozaki, 246

Zumoto, M., on the "Nishihara Loans," 246